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CASE NUMBER: 17-2-15099-1 SEA

Hon. Catherine Schaffer

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

CITY OF SEATTLE, Respondent, vs. STEVEN G. LONG, Appellant.	No. 17-2-15099-1 SEA CITY OF SEATTLE'S RESPONSE BRIEF

The City stands ready to resolve this case by providing Mr. Long with a complete refund of any amounts that have been paid to date and to extinguish any remaining amounts Mr. Long owes the City related to the tow and impound of his fully operational truck. Early on in this case, the City made this clear to Mr. Long's counsel, unfortunately Mr. Long's counsel responded that such resolution was unlikely because this was a "test case." Given this, the City has had no choice but to litigate this case and defend against Mr. Long's novel defenses and legal theories. If Mr. Long's theories are accepted, the practical effect will be that individuals will have the right to park wherever they want, for as long as they want, and the City (as well as every other governmental agency in the State) will be unable to enforce any number of laws, including parking laws, against a certain class of individuals.

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While the City sympathizes with the plight of the homeless in Seattle and does not dispute it is a major problem facing the City, it is also without dispute that the City is spending considerable amounts of time and money trying to solve this extraordinarily complex problem. Mr. Long's situation deserves attention, as does the situation of other homeless individuals. But the plight of the homeless is better served by making the case to the political branches and to the people to change the laws, not by advancing tortured legal theories that are divorced from real world consequences. While "[j]udges and lawyers, like other humans, are moved by natural sympathy in a case like this," sympathy alone cannot give rise to constitutionally-required duties and obligations. *DeShaney v. Winnebago County Dep't of Soc. Serv.*, 489 U.S. 189, 202 (1988). Because nothing the City did was unconstitutional or impermissible under State law, this Court should affirm.

I FACTUAL BACKGROUND

A. Mr. Long.

Mr. Long is a self-described "camper." *See* Attachment A, at Exhibit A, p. 27.[1] Mr. Long is a tradesman, with experience in plumbing, electrical, landscaping, painting, machine operation and auto mechanics. *See id.* at 9-10. Mr. Long is currently employed at People Ready, where he has worked for eighteen years. *See id.* p. 14. Mr. Long testified that prior to the time his car was towed, he was offered additional work at least two times, but declined both offers. *See id.* at 18 & pp. 56-57. With respect to the latter employment opportunity, if Mr. Long had taken that job, Peter's Place—a day shelter—would have fixed Mr. Long's truck which he believed was not fully operational. *See id.*

[1] The Municipal Court record currently on file with this Court appears to be incomplete and/or not in recognizable order, nor is it paginated. For example, the Declaration of Michael K. Ryan filed with the Municipal Court appears both out of order and incomplete. For ease of reference, the City provides: (1) as Attachment A, the Declaration of Michael K. Ryan, with all exhibits, that was filed with the Municipal Court; (2) as Attachment B, the Declaration of Laura Beck, with exhibits, that was filed with the Municipal Court; and, (3) as Attachment C, the Municipal Court's Opinion. The City will provide this Court with a working copy of the City's Brief with these attachments.

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B. The 72-hour notice, tow and impound.

On July 5, 2016, Mr. Long moved his truck onto City property at the corner of Norman and Poplar streets, where it remained until it was towed on October 12, 2016. *See id.* at 27. Mr. Long never asked anyone from the City whether he was parked on City property, and no one from the City told him it was acceptable to park in that location for more than 72 hours. *See id.* at p. 29. While the City does not always enforce the 72-hour requirement, it does so when it receives a complaint about the vehicle. *See id.* at Exhibit C, at 63; *see also id.* at Exhibit G. On October 5, 2016, several Seattle Police Department officers were dispatched to an area where Mr. Long kept his vehicle when a local property owner complained about some tents and tarps that were located on this property. *See id.* at Exhibit B, pp. 7-8. After addressing those concerns, an individual from a local business approached Officer Velling to complain about an incident that occurred several nights earlier involving a knife. *See id.* The unidentified person said that a person threatening some workers with a knife was associated with a white pick-up truck, pointing towards Mr. Long's truck. *See id.*

When the officers went over to the truck to investigate, they could not see Mr. Long. Mr. Long, however, came around the truck visibly displaying a knife in his pocket. *See id.* at Exhibit E, p. 54. After some back and forth, the officers explained that parking on City property for more than 72 hours was not permissible. *See id.* at Exhibit D, p. 24. Mr. Long stated that his truck did not run and that he needed to get a part. To avoid any possible additional confrontations between Mr. Long (or his friends) and the adjacent property owner and/or its employees, the officers called in a Parking Enforcement Officer (PEO) to issue a 72-hour notice. As Officer Dickson explained: "Being that the vehicle was associated with a knife threat, removing the vehicle from the area would separate the parties as best as possible [as] we could come up with at that time." *Id.* at 30. In fact, Mr. Long only

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needed to move his vehicle a single City block to extinguish the 72-hour notice. *See id.* at 31. Mr. Long never told any of the officers that he was living in the vehicle. *See, e.g., id.* at Exhibit C, p. 62.

After the police left, Mr. Long ripped the 72-hour sticker off the car in the hopes that the City would simply forget about his vehicle being illegally parked. *See id.* at Exhibit A, pp. 58-59. The PEO did not come back within 72 hours; rather, she returned 168 hours (7 total days) later to see if Mr. Long had moved his vehicle. *See id.* at Exhibit C, p. 64. The PEO explained that she did this as a "courtesy" to allow Mr. Long "a little extra time [because] [m]aybe the part needed to be ordered." *See id.* When she returned a week later, the vehicle had not moved and it was towed. While Mr. Long stated in his Declaration that he was shocked by the tow, Dkt. #6, p. 92; a few days before signing his Declaration, Mr. Long testified that he always knew that there was a "possibility" that his car would be towed. *See* Attachment A, at Exhibit A, p. 46. The tow took almost six hours. *See id.* at p. 69.

During this week-long period between when his car was stickered and when it was ultimately towed, Mr. Long made no efforts to get the part he thought[2] he needed for his car to run. *See id.* p. 56. For example, he did not call any of his family or friends to assist him in fixing or moving his vehicle, or to see if he could park his vehicle at their homes. *See id.* at 58. Perhaps most importantly, Mr. Long made no effort to even see if his vehicle was operational. *See id.* at 67-68. After a court hearing, which will be described below, Mr. Long went to the impound lot to get his vehicle out of impound. The vehicle started, and Mr. Long drove it for twenty minutes to a friend's house in Brier, where the vehicle is currently parked. *See id.* at 65-66 & 81.

C. The proceedings below.

Mr. Long appeared before a Magistrate on November 2, 2016. *See id.* at Exhibit F. Although he was represented by Columbia Legal Services at that time, for unexplained reasons, his lawyers did

[2] It turns out the truck was fully operational.

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not attend the court hearing with Mr. Long. *See id.* at Exhibit A, p. 73. At that hearing, Mr. Long did not dispute that his vehicle was parked on City property for more than 72 hours. Nor did Mr. Long raise any of the arguments he is making in this appeal. Mr. Long did note, however, that the officers were "apologetic" that he had to move his car. *See id.* at Exhibit F, p. 10. The Magistrate asked Mr. Long if the reason he did not move his vehicle was "because it wasn't operable?" To which Mr. Long answered affirmatively. *See id.* at 12. He also told the court that he had "two other places to go put it on," because two friends had offered to allow Mr. Long to put his truck on their property. *See id.* At the hearing's conclusion, the Magistrate found Mr. Long in violation of the 72-hour ordinance, waived the cost of fine associated with the ticket, set Mr. Long up with an interest-free payment plan that significantly reduced the amount of two and storage fees, and upon setting up that plan provided Mr. Long with the necessary release papers. The payment plan is located as Exhibit 3 to Mr. Long's Declaration. *See* Dkt. # 6, p. 101.

All the costs associated with a tow and impound are set by a contract with Lincoln Towing. *See* Attachment B, at ¶ 2. In fact, the City was responsible for the entire amount—$946.61—Mr. Long owes. *See id.* at ¶ 5. In effect, the City provided Mr. Long, vis-à-vis the Municipal Court's payment plan and its requirement that the City pay $370.45, an interest-free loan for the remaining money necessary to get his vehicle out of impound. This is an unusual case. In almost all cases, to get a vehicle out of impound, the person seeking to retrieve the vehicle must pay the total costs before getting the vehicle out of impound. *See id.* at ¶ 3. Here, the Magistrate took a different approach and provided Mr. Long with the opportunity to enter into a payment plan and provided Mr. Long with release papers. *See* Attachment B, at Exhibit A.

After a lengthy discovery process that included five depositions, Mr. Long moved for summary judgment on three different affirmative defenses. After reviewing the parties' numerous

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submissions, and hearing lengthy oral argument, the Municipal Court issued a 14-page written opinion rejecting each of Mr. Long's defenses. *See* Attachment C. First, the court concluded that Mr. Long violated the City's 72-hour rule, which prohibits a vehicle to be parked in a public-right-of-way for more than 72 hours. *See id.* at 5-6. Second, the court rejected Mr. Long's substantive due process "defense" because Mr. Long failed to provide sufficient evidence to support the claim. *See id.* at 6-8. Third, the court rejected Mr. Long's Homestead Act defense, in large part, because "there was no sale of the truck, let alone a forced sale to satisfy debts." *Id.* at 9-11. Finally, the court rejected Mr. Long's claim that the impound and associated fees amounted to grossly disproportional punishment under the Eight Amendment's Excessive Fines Clause. *See id.* at 11-14. Ultimately, judgment was entered in the City's favor and Mr. Long timely appealed.

II ISSUES ON APPEAL

1) Is a substantive due process claim based on the state-created danger doctrine even an affirmative defense, and if so, was the conduct of the PEO in authorizing the tow so conscience shocking as to violate substantive due process? **No and no.**

2) Does the Homestead Act apply in this case? **No.**

3) Is the Eighth Amendment's Excessive Fines Clause implicated where Mr. Long was not permanently deprived of his alleged home, and where he voluntarily agreed to pay a significantly reduced amount of fees over a twelve-month period? **No.**

III LEGAL ARGUMENT

While the City addresses each of Mr. Long's "defense" in turn, it may be helpful to set forth some general principles that help frame Mr. Long's defenses.

First, "parking on a public right of way is a privilege, revocable by the State at any time." *Galvis v. State Dept. of Transp.*, 140 Wn. App. 693, 706, 167 P.3d 584 (2007); *see also Sandona v.*

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City of Cle Elum, 37 Wn.2d 831, 840, 226 P.2d 889 (1951) ("Parking is not a right, but a privilege[.]"); *Int'l Union of Operating Eng'rs, Local 150 v. Vill. of Orland Park*, 139 F. Supp.2d 950, 960-61 (N.D. Ill. 2001) (holding there is no constitutional "right to park one's car wherever one wants."); *Covington v. City of Raleigh*, 531 F.2d 220, 222 (4th Cir. 1976) (per curiam) ("One difficulty we have with plaintiff's claim . . . is that it apparently presumes that parking alongside a curb on a street at a place in which parking is not prohibited is a right protected by the Federal Constitution. We do not agree."); *Armstrong v. City of Savannah*, 296 S.E.2d 690, 691 (Ga. 1982) ("parking of an automobile in an unrestricted location is not a right protected by either the Federal Constitution or State law."

Second, the "Constitution does not confer the right to trespass on public lands. Nor is there any constitutional right to store one's personal belongings on public lands." *Church v. City of Huntsville*, 30 F.3d 1332, 1345 (11th Cir. 1994). Likewise, no person has a constitutional right to sleep on public property. "Homeless persons are not a suspect class, nor is sleeping out-of-doors a fundamental right." *Joel v. City of Orlando*, 232 F.3d 1353, 1357-58 (11th Cir. 2000) (citing cases); *see also Whiting v. Town of Westerly*, 942 F.2d 18, 21 (1st Cir. 1991).

Third, "[c]ourts across the country have consistently held that there is no constitutional right to housing." *Reese v. Miami-Dade Cnty.*, 242 F.Supp.2d 1292, 1301 (S.D. Fla. 2002) (citing, cases); *see also Slack v. Farr*, 2016 WL 1458147, at * 4 (W.D. Wash. Mar. 3, 2016) ("There is no constitutional right to housing."). This is so because certain societal problems are best addressed through the political process, not the courts. As the United States Supreme Court said:

> We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional access to dwellings of a particular quality[.] Absent constitutional mandate, the assurance of adequate housing . . . are legislative, not judicial, functions.

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Lindsey v. Normet, 405 U.S. 56, 74 (1972). Given all of this, it is understandable why Mr. Long has asserted several novel legal theories in this case. But the practical consequences of those legal theories cannot be ignored.

If Mr. Long is successful, the City (and possibly every other governmental agency in the State) will be powerless to tow any vehicle that someone is (or maybe is) living in for fear that it might be violating what effectively amounts to a constitutional right to park one's car wherever one wants, for as long as one wants. If, for example, an officer can be held personally liable under the "state-created danger" doctrine for authorizing a tow of a vehicle, no officer will every authorize a tow under such circumstances, lest they face personal ruinous financial liability. Similarly, if the Eighth Amendment is violated for impounding a vehicle that someone may be living in, then no such cars will ever be impounded because when it comes to constitutional liability, it is better to be safe than sorry. Likewise, if following State law regarding impounds violates a different State law regarding homesteads, municipalities and other governments throughout the State will not be able to address the public safety issues relating to unauthorized parking on public property nor comply with State law as it relates to the sale of abandoned vehicles. This is, indeed, a "test" case insofar as it seeks to get around settled constitutional doctrines and create a constitutional and statutory right to park one's car wherever one wants, for as long as one wants.

A. The due process "defense" is procedurally improper and without legal merit.

1. The state-created danger doctrine is not a defense.

While the Municipal Court rightly rejected Mr. Long's substantive due process arguments based on the nebulous "state-created danger" doctrine, there was no need for the court to analyze the issue because it is not a "defense." State-created danger claims are *liability-creating* claims that can be brought under 42 U.S.C. § 1983. *See, e.g., Butera v. Dist. of Columbia*, 235 F.3d 637, 648-49 (D.C.

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Cir. 2001) ("there may be possible constitutional liability under § 1983 where the state creates a dangerous situation or renders citizens more vulnerable to danger.") (emphasis added; quotation omitted).[3] In fact, every case Mr. Long cites involves a § 1983 claim, and Mr. Long points to no case, because none exists, where this theory of liability was used defensively, as opposed to affirmatively.

Mr. Long made no cross-claim against the City. Even if someone violated Mr. Long's rights by towing his car (which they most certainly did not), that would not entitle Mr. Long to any of the relief he requests.[4] At most, it would potentially subject the officers involved to a claim under § 1983 (which of course would be subject to a defense of qualified immunity). If Mr. Long believes his rights were violated, he could sue the City and its officers in a different forum, but he cannot turn an affirmative liability-creating claim into a defense.

2. Even assuming consideration is appropriate, Mr. Long's theory fails.

"Generally, the Fourteenth Amendment's Due Process clause does not confer any affirmative right to government aid and typically does not impose a duty on the state to protect individuals from third parties." *Henry A. v. Willden*, 678 F.3d 991, 998 (9th Cir. 2012) (quotations & alterations omitted). The "state-created danger" doctrine can create liability only where "the state affirmatively places the plaintiff in danger by acting with deliberate indifference to a known and obvious danger. *Id.* (quotation omitted). "Deliberate indifference is a stringent standard of fault, requiring proof of 1) an unusually serious risk of harm, 2) defendant's actual knowledge of (or, at least, willful blindness to) that elevated risk, and 3) defendant's failure to take obvious steps to address the known, serious

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[3] *See also* Jeremy Daniel Kernodle, *Policing the Police: Clarifying the Test for Holding the Government Liable Under 42.U.S.C. § 1983 and the State-Created Danger Doctrine*, 54 Vand. L. Rev. 165, 171-177 (Jan. 2001) (explaining the historical origins of "state-created danger" claims).

[4] That relief—an "eliminat[ion of] all financial obligations imposed upon him"—has always been available to him, and is still available to him.

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risk." *Sanchez v. City of Fresno*, 2014 WL 2042058, at * 10 (E. D. Cal. 2014) (citations & quotations omitted). "In addition, a plaintiff pursuing a danger creation claim must establish that the defendant is the proximate cause of his or her injuries." *Id.*

Mr. Long does not claim that he was left in a high-crime area at 2:30 a.m. and raped (*Wood v. Ostrander*, 879 F.2d 583 (9th Cir. 1989)), or that the City exposed him to an unstable and vengeful neighbor by telling that neighbor that he accused him of sexually assaulting a minor (*Kennedy v. Ridgefield City*, 439 F.3d 1055 (9th Cir. 2006)), or that he was left in minus 25 degree weather, highly intoxicated, wearing only a t-shirt and jeans (*Munger v. City of Glasgow Police Dept.*, 227 F.3d 1082 (9th Cir. 2000)); nor is this a case where the City placed Mr. Long into any type of custodial situation where he was abused (*Tamas v. Dep't of Soc. & Health Servs.*, 630 F.3d 833 (9th Cir. 2010)). There is no parallel between these cases and Mr. Long's.

Mr. Long claims that the officers knew he was living in this truck,[5] and that when his truck was towed he had to spend several hours in the rain before heading to Peter's Place. Notably, Mr. Long points to no evidence that any officer "knew" he had no other place to go if his truck was towed. Indeed, the facts show the opposite: He went to Peter's Place on the night in question. Thus, whether any officer "knew" he was living in his truck is not the relevant inquiry because under Mr. Long's own theory, the only relevant question would be whether the officer who authorized the tow of the vehicle "knew" he had no other place to go on the night in question. No evidence suggests, let alone establishes as a matter of law, that the any officer knew Mr. Long had no other place to go.

[5] While Mr. Long repeatedly claims that the City "knew" that he lived in his vehicle, this is not true. This was a disputed fact throughout the proceedings below. *See* Transcript at 38. In any event, it does not ultimately matter because even if City personnel "knew" Mr. Long was living in his truck, Mr. Long's substantive due process "defense" fails on multiple other grounds. Moreover, the court was not hearing cross-motions for summary judgment; rather, it only addressed Mr. Long's motion, thus, the facts needed to be read in favor of the non-moving party (the City).

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The most on-point case is *Sanchez*, which involved a similar allegation brought by homeless individuals. After a lengthy discussion of the law, and analyzing cases discussing whether environmental exposure could even form the basis of a claim based on the state-created danger doctrine, the court granted summary judgment in the city's favor. *Sanchez*, 2014 WL 2042058, at ** 5-12. In so concluding, the court did not address the question of whether the city "affirmatively" placed any plaintiff in danger because plaintiffs' claims were deficient in other regards. *See id.* at ** 8-9; *see also id.* at 9 ("This body of caselaw is muddled enough without adding an advisory opinion.").

In analyzing the "deliberate indifference" prong, the court first rejected the notion that a substantive due process claim could be made out "based upon [a] theory" that increasing the risk of harm to someone, without any actual physical injury *caused by a third party*, could substantiate a claim under the state-created danger doctrine. *See id.* at ** 10-11; *see also Triplett v. Wash. State Dept. of Soc. & Health Servs.*, 193 Wn. App. 497, 516-520, 373 P.3d 279 (2016) (requiring that "state-created danger" case be predicated on an injury caused by a "private" or "third party"). Here, because Mr. Long does not allege that any private or third party harmed him, his "defense" necessarily fails

Instead, he relies on an alleged environmental exposure—being in the rain for several hours (by his own choice) before securing shelter. As to environmental exposure, *Sanchez* addressed several cases involving circumstances where highly intoxicated individuals were left to their own devices by police officers in freezing or sub-freezing temperatures and either died or suffered permanent brain damage because of hypothermia. *See id.* at * 11. By contrast, Mr. Long's only alleged physical injury is his laymen opinion, not supported by any actual medical evidence, that he "had the flu for a week" after

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spending several hours in the rain even though he was able to obtain shelter on the night his truck was towed. *See* Dkt. #6, p. 92.[6]

Ultimately, the *Sanchez* court granted the city summary judgment for lack of competent evidence demonstrating any claimed injury because of being exposed to the elements. *Sanchez*, 2016 WL 2042058, at * 12. That is exactly what the Municipal Court did in this case because it ultimately determined "Mr. Long has not provided any evidence that his exposure to the wind and rains was the cause of the flu." Attachment C, p. 8. Given it was Mr. Long's summary judgment motion, it was incumbent upon him to provide admissible medical evidence to support his claim. He failed to do so and therefore did not meet his burden of establishing an injury sufficient to support a "state-created danger" claim. Moreover, even if Mr. Long's lay medical opinion was sufficient to demonstrate any injury, the facts presented by Mr. Long do not even come close to demonstrate that any officer placed him into a dangerous situation; thus, the Municipal Court was correct in concluding that Mr. Long failed to provide sufficient evidence of any City action "that can be properly characterized as arbitrary and conscience shocking in the constitutional sense." Attachment C, p. 8 (quotation omitted).

Finally, while it is not relevant to whether Mr. Long's "defense" can succeed, the City takes exception to Mr. Long's claim that because the City towed his fully operational vehicle, he has been forced "to live under a tarp." Br. at 33. With respect, this is Mr. Long's choice. As the court recognized: "There is nothing in the record to support Mr. Long's allegation that he cannot use his truck as shelter. He may not be able to live in it for more than two weeks out of every six months while it remains in Brier, but there is nothing that prohibits him from returning the vehicle to Seattle other than his unfounded fear that it might be towed." Attachment C, p. 14.

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[6] It is medically suspect that exposure to the elements can cause the "flu" or even a "cold." *See, e.g.*, Angela Haupt, *Busted: 8 Myths About Flu Season*, U.S. NEWS & WORLD REPORT (Sep. 19, 2012) available at https://health.usnews.com/health-news/articles/2012/09/19/busted-8-myths-about-flu-season (last visited Oct. 23, 2017).

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B. Mr. Long's homestead exemption claim fails as a matter of law.

As with his substantive due process "defense," Mr. Long's "homestead" defense provides him with no meaningful relief because even if the act applied or even it the act was violated, that would not extinguish any amounts Mr. Long owes to the Seattle Municipal Court under the agreement he knowingly and voluntarily entered into with the Municipal Court. In fact, if Mr. Long believed his homestead rights were at issue, it was incumbent upon him to assert those rights during his initial hearing with the Magistrate. He undisputedly did not do so. Frankly, it is simply unfair to scold the Magistrate, and go so far as to accuse the City and the Magistrate of "extortion," when the homestead issues could have been brought to the Municipal Court's attention at the initial hearing and appropriately addressed at that time. On the facts of this case, Mr. Long should not be allowed to press this "defense," and this is especially so because his real complaint is not with the City's impound laws, but rather with the requirements of State law that govern impoundments.

1. Because there was no forced sale, the homestead act does not apply.

Article XIX, § 1 of the Washington Constitution, provides: "The legislature shall protect by law from *forced sale* a certain portion of the homestead and other property of all heads of families." (emphasis added). Apparent from the text, the Framers were concerned with the loss of family homes through a "forced sale." This provision is not self-executing; thus, it only requires that the Legislature set up a statutory procedure that "does not fall below the constitutional minimum." *Tellevik v. Real Property Known as 6717 100th Street S.W.*, 83 Wn. App. 366, 378-79, 921 P.2d 1088 (1996). The Legislature accomplished this task when in enacted the homestead act, *see* RCW 6.13 *et seq.*

As the Municipal Court properly recognized, "there was no sale of the truck, let alone a forced sale to satisfy debts. The vehicle was impounded due to a violation of the traffic code." Attachment C, p. 10. Recognizing this, Mr. Long pivots and now argues that the *threat of a forced sale*, without

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more, violates the Homestead Act. Unsurprisingly, Mr. Long cites no authority supporting such a contention, relying on the liberal construction cannon. Br. at 28. But liberal construction has it limits.

For example, in *Felton v. Citizens Federal Savings & Loan Association of Seattle*, our Supreme Court held that a nonjudicial trustee sale is not a forced sale from which a homestead is exempt. 101 Wn.2d 416, 419-423, 679 P.2d 928 (1984). In analyzing the issue, the Court noted that a "forced sale," as that term is understood in the act,

> [D]oes not apply where the owner consents directly to the sale, or does so indirectly by consenting to, *or doing those acts or things that necessarily* or usually eventuate in a sale[. . . .] When the owner of the property consents to a sale under the execution or *other legal process*, the sale is not forced, but it is as voluntary, within the full import of the term, as it is when he directly effects the sale and executes the conveyance."

Id. at 423 (emphasis added; quotation omitted). In other words, courts must take into consideration the actions of the person who is claiming the homestead exception. As the Municipal Court rightly observed, Mr. Long had ample opportunity to move his vehicle and avoid the tow in question, and knew full well that if he did not move the vehicle it would be subject to being towed. This was not lost on the Municipal Court. *See* Attachment C, p. 11 ("Mr. Long's actions are analogous to a gambler betting the title to his home in a poker game and then declaring that the winner of the game cannot take title because of the homestead exemption.").

Likewise, Mr. Long had ample opportunity to raise this issue before the Magistrate. Although he had counsel at the time, for reasons unexplained in the record, counsel for Mr. Long chose not to accompany him to hearing before the Magistrate, where it would have been appropriate to raise any issues Mr. Long had regarding entrance into the Time Payment Plan that he voluntarily agreed to. It

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is far too late in the date for Mr. Long to claim that he was effectively coerced into entering into this agreement, which is a new argument he raises for the first time on appeal.[7]

Any claim that the "lien" granted by the State law in the impound statute, RCW 46.55.140, violates the Homestead Act is without merit. Br. at 28-29. That "lien" is merely a financial interest in recouping the costs associated with towing and storage, and that "lien" does not result in a forced sale, or any sale for that matter. Thus, to claim that such a "lien" is akin to the types of "attachments" with which the homestead act is concerned, *i.e.*, those attachments that result in forced sales, ignores reality. Again, Mr. Long cites no Washington authority supporting his view that the "lien" created by RCW 42.55.140 is an "attachment" for purposes of RCW 6.13.070.

To the extent there is any sale related to a tow and impound, that sale is not the result of any "lien," but rather a function of State's redemption statute, RCW 45.55.130, which governs the sale of "unredeemed" vehicles and it provides that any "impounded abandoned vehicle ... that is not redeemed within fifteen days of mailing of the notice and custody [required by statute] *shall be sold* at public auction[.]" (emphasis added). State law mandates the sale of unredeemed vehicles. *Accord Tellevik*, 83 Wn. App. at 376-77 (rejecting claim that forced sale of property connected with sale of controlled substances violated homestead statute). And nothing in State law ties any "debts" to the sale; rather, it simply mandates that any "impounded abandoned vehicle" must be sold.[8]

At base, Mr. Long's real complaint is not with the City's parking and enforcement law, but rather with the requirements of State law. Nothing in City law creates a "lien" on the vehicle—in fact,

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[7] The City will not dignify Mr. Long's charge that Magistrate Eng engaged in "a criminal offense called extortion" with a lengthy response. Br. at 28. The facts speak for themselves. All it will say that is that the Magistrate cut Mr. Long a significant financial break by (1) waiving the parking ticket; (2) significantly reducing the actual costs of the tow and impound; and, (3) permitting him to a payment plan that amounted to loan from the City that he had to pay back.

[8] RCW 46.55.010(1) defines an "abandoned vehicle" as any "vehicle that a registered tow truck operator has impounded and held in the operator's possession for one hundred twenty consecutive hours."

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by paying Lincoln Towing on Mr. Long's behalf, the City extinguished any "lien" that may have been associated with Mr. Long's vehicle—nor does any City law mandate the sale of impounded vehicles. Those are both functions of State law. To the extent there is any conceivable conflict between the homestead statute and the redemption statute, the redemption statute controls over the more general homestead exemption because it is the more specific statute related to the sale of "impounded abandoned vehicles." *See, e.g.*, *Matter of Estate of Little*, 106 Wn.2d 269, 283, 721 P.2d 950 (1986) (specific statutes control over general statutes when apparent conflict exists). But this Court need not even address this issue because there was no actual forced sale in this case; thus, Mr. Long lacks standing to challenge the sale requirements or any other provision of RCW 46.55, which are the gravamen of his homestead defense. *See* Attachment C, p. 10.

2. Failure to deliver the necessary declaration is fatal to the defense.

Even assuming the Act applies, and even assuming the proposition that a truck can be a homestead, it does not follow that Mr. Long followed the correct procedure in asserting his alleged rights. The act's "exemption" does not automatically apply to nontraditional homes, like Mr. Long's truck. Given the non-traditional nature of the "homestead" in question, proper notice must be given to the public that an individual is claiming a homestead in something like a vehicle.

While Mr. Long quotes only the first sentence of RCW 6.13.010, it provides in full:

> The homestead consists of real or personal property that the owner uses as a residence. In the case of a dwelling house or mobile home, the homestead consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for the owner.

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While the first sentence of RCW 6.13.010(1) could be read expansively, the remainder of that section talks in terms of "dwelling house" and "mobile homes;" thus, distinguishing between "real" and "personal" property.

Indeed, RCW 6.13.040(1), the "automatic exemption" upon which Mr. Long relies, specifically states that if the homestead in question "is any other personal property" that a homestead exemption *only* applies after a statutorily-required declaration is filed. That section provides in full:

> Property described in RCW 6.13.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.13.070 from and after the time the real or personal property is occupied as a principal residence by the owner or, if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after the declaration or declarations required by the following subsections are filed for record or, if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mobile home, from and after delivery of a declaration as prescribed in RCW 6.15.060(3)(c) or, *if the homestead is any other personal property, from and after the delivery of a declaration as prescribed in RCW 6.15.060(3)(d).*

(emphasis added). The term "property described in RCW 6.13.010" can only mean "dwelling homes" or "mobile homes" because that is the only "property" specifically described in RCW 6.13.010. A more expansive reading of the statutory phrase, which includes all personal property including vehicles, boats, tarps, tents, blankets, etc., would render the last sentence of RCW 6.13.040(1) superfluous. This is not how courts interpret statutes. *Cockle v. Dept. of Labor & Indus.*, 142 Wn.2d 801, 809, 16 P.3d 583 (2001).

In turn, RCW 6.15.060(3)(d) provides:

> A debtor who claims *as a homestead, under RCW 6.13.040, any other personal property*, shall *at any time before sale*, deliver to the officer making the levy a notice of claim of homestead in a statement that sets forth the following: (i) The debtor owns the personal property; (ii) the debtor resides thereon as a homestead; (iii) the debtor's estimate of the fair market value of the property; and (iv) the debtor's description of the property in sufficient detail for the officer making the levy to identify the same.

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(emphasis added). Thus, the statute makes plain that before a forced sale occurs, the debtor must deliver to the person conducting the "forced sale" a declaration claiming a homestead in the soon to be sold personal property.

Taken together, these provisions demonstrate that where, as here, an individual seeks homestead protection for a nontraditional home, that individual is required to follow the statutory procedures for securing the applicable exemption. The legislative history confirms this. At the same time the Legislature expanded RCW 6.13.010(1) to include "personal property" in the definition of what could be considered a homestead, it also amended the "automatic exemption" provision to specifically require that if the homestead was "any other personal property," which a truck would be, that the exemption would not apply until "after the delivery of a declaration as prescribed in RCW 6.15.060(3)(d)" and amended RCW 6.15.060(3)(d). *See* Dkt. #7 at 11-16 (legislative history). Thus, the Legislature envisioned an orderly process when an individual wanted to seek homestead rights in a nontraditional home.

Here, there is no dispute that Mr. Long never provided any person, including the City, the Magistrate, or Lincoln Towing, with the notice required under this section. Nor is there any dispute that Mr. Long did not invoke his purported homestead rights when he was before the Magistrate. Thus, no one had any notice that Mr. Long was claiming a homestead right in his truck until his current counsel invoked the act, months after Mr. Long met with the Magistrate. Indeed, the evidence shows that Mr. Long has no future intention of using his pickup truck as a residence. Thus, by statutory operation, his homestead rights are "presumed abandoned." RCW 6.13.050. Given all of this, it is improper for Mr. Long to claim any protection under the homestead statutes. *See, e.g.*, *In re Wilson*, 341 B.R. 21, 26-27 (9th Cir. BAP 2006) ("Here, at the time the debtor filed his petition, he

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did not occupy the residence . . . and, thus, was not entitled to Washington's automatic homestead exemption."). For these reasons, Mr. Long's homestead act "defense" fails.

3. Even if the act applied, it does not entitle Mr. Long to any relief.

Even if the automatic exemption applied, it still would not free Mr. Long from paying the fees associated with the tow and impound. RCW 6.13.070 creates a homestead exemption from "forced sale for the debts of the owner." Here, the purported "forced sale" that Mr. Long complains about is not based on any "debts" Mr. Long currently owes because it is undisputed it is the City, not Mr. Long, that owes the debt to Lincoln Towing. By operation of the Time Payment Plan, Mr. Long entered into a voluntary agreement with the Seattle Municipal Court; thus, eliminating any possibility of a forced sale (even assuming a sale pursuant to the State laws governing impounded vehicles is a "forced sale" as that term is defined in the Homestead Act). While it is true that Mr. Long could have paid his impound and tow fees to get his truck out of impound, that does not mean he can *now* invoke the homestead exemption under circumstances such as this because it gets him no relief.

This Court should not adopt Mr. Long's expansive and tortured reading of the Homestead Act, which will undoubtedly call into question hundreds, if not thousands of impounds, around the State. If Mr. Long's interpretation of the Act is accepted, then State laws regarding the proper procedures to be followed when a vehicle is impounded would be called into constitutional doubt. Indeed, buried in a footnote, Mr. Long claims that any liens created by State law are "unconstitutional . . . and simply unenforceable." Br. at 29 n.15.[9] Given there was no "forced sale" in this case, or any sale for that matter, there is no need for this Court to address this issue and Municipal Court should be affirmed. While Mr. Long's circumstances are unfortunate and far too common, the best way to

[9] The City is not aware whether Mr. Long has notified the Attorney General's Office in this matter even though Mr. Long calls into question the constitutionality of State statute.

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accomplish the laudable goals of addressing the undeniable homelessness problem is through the political process, not through an unsound and unwise legal theory that has consequences well beyond this case because it would place a constitutional cloud over the State's impound laws. While the City understands that Mr. Long's counsel sees this case as a "test case," there is nothing to test as the City is more than willing to repay and extinguish any debt he owes the City. A declaration that the City violated the Homestead Act, without out, provides Mr. Long with no actual relief.

C. Mr. Long's Eighth Amendment Claim fails as a matter of law.

The Excessive Fines Clause "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *United States v. Bajakajian*, 524 U.S. 321, 328 (1998) (quoting *Austin v. United States*, 509 U.S. 602, 609-10 (1993).[10] To be considered a "fine" under the Clause, the sanction applied must have a punitive purpose. *See Austin*, 509 U.S. at 609-10. Even if a sanction is properly considered a "fine" subject to the Excessive Fines Clause, it is unconstitutional only if "it is *grossly* disproportional to the gravity of a defendant's offense." *Bajakajian*, 524 U.S. at 334 (emphasis added).

1. An impound is not a "fine" for Eighth Amendment purposes.

As a matter of law, an impound is not a "fine" for purposes of the Eight Amendment. Mr. Long's arguments, which rely exclusively on *forfeiture* cases, ignore the undisputed fact that no forfeiture occurred in this case. At most, Mr. Long suffered a temporary deprivation of access to his alleged home. Thus, Mr. Long's claims, for example, that the "forfeiture of a home is particularly likely to be found unconstitutional," Br. at 12, or that "[c]ourts regularly hold that forfeiture of a home

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[10] The Excessive Fines Clause has not been incorporated against the States. *See, e.g., McDonald v. City of Chicago*, 561 U.S. 742, 765 n.13 (2010). For purposes of this Brief only, the City assumes it applies without waiving its ability to challenge its application in further proceedings. Moreover, to the extent Mr. Long asserted any defense under the Washington Constitution in this regard, he has abandoned that claim on appeal by failing to provide any argument or citation to authority on the issue.

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is disproportionate to a criminal drug offense," *id.* at 15; sidestep this critical issue and assume a faulty premise: That being denied access to one's alleged home for a brief period is constitutionally on par with a permanent deprivation of one's home under the Eight Amendment.

Mr. Long cites no authority supporting his claim that a temporary impound is a "fine" for Eighth Amendment purposes. Rather, he simply assumes the premise. *See, e.g.*, Br. at 8. Numerous courts, however, have held that permanent loss is the *sine qua non* for whether something is a "fine" for Eight Amendment purposes. *See, e.g.*, *Sessler v. Crawford Cnty. Child Support Enforc. Agency*, 2014 WL 3014513, at * 4 (N.D. Ohio July 3, 2014) (collecting cases holding that "fine" equals permanent deprivation, not temporary deprivation). In the only case the City is aware of where such a claim was made, the United States Court of Appeals for the Eighth Circuit categorically rejected an identical argument, noting that such an argument "merits little discussion." It explained:

> The term "fine" denotes a payment extracted by the government and payable to the government. *See Browning-Ferris Indus. V. Kelco Disposal Inc.*, 492 U.S. 257 (1989). A deprivation by the government must be intended to be permanent to constitute a fine, as in the case of civil forfeitures. *See, e.g.*, *Austin v. United States*, 509 U.S. 602 (1993) (Excessive Fines Clause may limit the amount of in rem civil forfeitures sought by the government); *Alexander v. United States*, 509 U.S. 544 (1993) (Excessive Fines Clause applies to forfeiture of assets under RICO). Because we agree that *the temporary impoundment of a vehicle cannot fairly be considered a fine*, we affirm the district court's dismissal of Coleman's Eighth Amendment claim.

Coleman v. Watt, 40 F.3d 255, 263 (8th Cir. 1994) (emphasis added); *see also Bajakajian*, 524 U.S. at 328 ("Forfeitures—payments in kind—are thus 'fines' if they constitute punishment for an offence."); *Browning-Ferris*, 492 U.S. at 269 ("the Excessive Fines Clause was intended to limit only those fines directly imposed by, *and payable to*, the government.") (emphasis added). Because this impound did not result in the permanent loss of his vehicle, it cannot be considered a "fine" for purposes of the Eight Amendment.

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2. The fees associated with the tow and impound are not "fines" because they are remedial, not punitive.

As an initial matter, Mr. Long did not pay to get his car out of impound, the City did. In turn, Mr. Long must pay the City back per the payment plan he voluntarily agreed to—a payment plan that provided Mr. Long with over a $370.00 discount on the actual costs associated with the tow and impound. And because there is no dispute that the payment plan does not require any additional amounts aside from the amount the City paid to Lincoln Towing on Mr. Long's behalf, the payment plan is purely remedial because it is designed to pay the City back for what is, for all intents and purposes, an interest free loan that the City has provided Mr. Long. Despite this, Mr. Long intimates throughout his Brief that that if he does not pay the required $50 per month that his truck will be subject to forfeiture. Such intimation is false because as the Municipal Court recognized: "His truck is not subject to forfeiture if he does not pay the storage and impound fees as Mr. Long argues." Attachment C, at 13. Thus, Mr. Long's repeated invocation of the Magna Carta's Amercements Clause, while creative, rings hollow.

Furthermore, payment of the fees associated with the tow and impound are not "fines" for Eight Amendment purposes because they are assessed to cover the costs associated with the tow, temporary storage of the vehicle, and administrative costs. As the Supreme Court noted, when a required payment is to compensate the government for a loss, such payments are not fines for purposes of the Eighth Amendment. *See, e.g.*, *Bajakajian*, 524 U.S. at 329; *see also One Lot Emerald Cut Stones v. United States*, 409 U.S. 232, 237 (1972) (per curiam) ("monetary penalty [ ] provides a reasonable form of liquidated damages for violation of the inspection provisions and serves to reimburse the Government for investigation and enforcement expenses."). In other words, sanctions that are "primarily remedial . . .[and] reimburse the government for the expense[s]" related to the

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sanction are not "fines" for Eight Amendment purposes. *Louis v. Comm'r of IRS*, 170 F.3d 1232, 1236 (9th Cir. 1999) (per curiam).

In *Bajakajian*, for example, the Court determined that the government's "loss of information regarding the amount of currency leaving the country . . . would not be remedied by the confiscation of respondent's $357,144." 524 U.S. at 329. In other words, there was no logical nexus between what the government loss (information) and the amount of money it sought to forfeit ($357,144). It was this failure to show a causal nexus that led the Court to conclude the that forfeiture was not remedial, but was punitive. The opposite is true here.

All the fees associated with the tow and impound are remedial, not punitive. SMC 11.30.120.B states: "Any person so redeeming a vehicle impounded by the City shall pay the towing contractor for *costs of impoundment (removal, towing, and storage) and administrative* fee prior to redeeming such vehicle." (emphasis added). Thus, the City's redemption statute, on its face, shows that the fees associated with the tow and impound are remedial, not punitive. While the SMC does mention "all penalties, fines, or fees owed," that language *only* applies to specific situations such as a tow under SMC 11.30.105 (impoundment via arrest) and SMC 11.30.040.A.7 (impoundment with four or more parking tickets). *See* SMC 11.30.120.B. In fact, the fees associated with this tow are set by contract and are meant to off-set the actual costs of the tow and storage. Thus, it cannot be said that the fees associated with the tow and impound are punitive in any way. *See also Jones v. St. Louis Parking Violations Bureau*, 2006 U.S. Dist. LEXIS 30881, at * 7 n.3 (E.D. Mo. May 8, 2006) (noting that "towing and storage fees—because they are administrative costs—may not constitute part of the 'fine'" for purposes of the Eight Amendment, but assuming they were and dismissing similar claim). By focusing on the language of the SMC, as opposed to its actual effect in this case, Mr. Long gets the analysis wrong because "[e]ven if the statute as it reads could lead to punishment pursuant to the

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Austin analysis, unless the statute is applied so as to effect a punishment, there obviously is no punishment." *State v. Cole*, 128 Wn.2d 262, 279, 906 P.2d 925 (1995). Mr. Long was not "punished" for violating the City's traffic code; rather, he was treated better than most.

Because it is undisputed that Seattle routinely requires every person whose car is towed to pay the fees associated with the tow and storage, Mr. Long has not met his burden to demonstrate that, in this case, the fees imposed were meant to punish him. *Louis*, 170 F.3d at 1236 (burden is on party claiming sanction is a "fine"). Because the fees Mr. Long is required to pay vis-à-vis the payment plan are undisputedly remedial, his Eight Amendment defense fails as a matter of law.

3. Even if the Excessive Fines Clause applies, Mr. Long's claim fail.

Mr. Long's defense fails as a matter of law because there is nothing disproportional, let alone grossly disproportional, about the fees at issue. Indeed, Mr. Long's arguments try to place a square peg into a round hole because he relies exclusively on cases that analyze the issue in the context of a *forfeiture* related to a criminal conviction. Thus, the City doubts that any of the factors courts routinely apply should be applied in a case such as this. Nonetheless, Mr. Long's claim that having to pay $50 a month for twelve months violates the Excessive Fines Clause is wholly without merit.

In assessing whether a "fine" is so out-of-whack as to be "grossly disproportional," courts must be "mindful of *Bajakajian*'s admonition 'that any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise.'" *U.S. v. Viloski*, 814 F.3d 104, 113 (2d Cir. 2016) (quoting *Bajakajian*, 524 U.S. at 336). "Because questions of proportionality are reserved primarily to the legislature, the *Bajakajian* test *is highly deferential*." *United States v. Blackman*, 746 F.3d 137, 144 (4th Cir. 2014) (emphasis added). Given this, the Supreme Court specifically eschewed any test based on "strict proportionality between the amount of a punitive forfeiture and the gravity of a criminal offense[.]" *Bajakajian*, 524 U.S. at 336. In assessing whether a fine is "grossly

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disproportional," courts look at three factors: "[1] the degree of the defendant's reprehensibility or culpability," [2] "the relationship between the penalty and the harm to the victim caused by the defendant's actions," and, [3] "the sanctions imposed in other cases for comparable misconduct." *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 435 (citations omitted).

First, Mr. Long claims that because a parking infraction "is so minor" that violating the City's parking laws imposes "virtually no harm whatsoever." Br. at 18. Quite the contrary. The fact that this is a civil infraction only highlights how Mr. Long is trying to fit a square peg into a round whole by even applying a set of factors developed to assess proportionality of additional money fines and forfeitures as they specifically relate to criminal convictions. In any event, in this analysis, this court can consider Mr. Long's own actions. For example, Mr. Long made no effort to remove his vehicle after the 72-hour notice was issued, even though the vehicle worked. Second, it is undisputed that Mr. Long purposefully removed the 72-hour sticker in the hopes of evading parking enforcement authorities. Such an "apparent disregard of the enforcement authority" cuts against any finding of gross disproportion. *Jones*, 2006 U.S. Dist. LEXIS 30881, at *4 (E.D. Mo. May 8, 2006).

Second, while Mr. Long claims that his "truck . . . was not causing any problems," Br. at 11; he ignores the undisputed fact that a neighboring business did complain to SPD about an incident regarding a knife; thus, individuals *associated with the truck* were causing problems—namely pulling a knife on someone cleaning up a parking lot. It is likewise undisputed that Mr. Long had a knife on him when SPD arrived. Thus, it was entirely reasonable for the officers to try and figure out a way to diffuse any future incidents. Indeed, the very reason why the officers decided to give Mr. Long a 72-hour notice was because "his vehicle was associated with a knife threat, removing the vehicle from that area would separate the parties as best as possible [as] we could come up with at that time."

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Attachment A, Exhibit D, p. 30. Thus, there was a legitimate public safety concern with Mr. Long's vehicle remaining in that area.

In making this argument, Mr. Long trivializes the City's interest in seeing all its laws, including its traffic and parking laws, followed. Indeed, "the 'practical and modern necessity of maintaining orderly traffic enforcement' dictates the need, especially in large cities, to enact an ordinance allowing illegally parked cars to be ticketed." *Armstrong*, 296 S.E.2d at 691 (Ga. 1982) (quoting *City of Seattle v. Stone*, 67 Wn. 886, 410 P.2d 583, 586 (1966)); *see also Collier v. City of Tacoma*, 121 Wn.2d 737, 756, 854 P.2d 1046 (1993) (noting interests in "traffic safety" is substantial). As the Ninth Circuit explained in a case Mr. Long relied upon below:

> The public interest in removing vehicles from streets and highways in the circumstances specified in the traffic code is also substantial, though differing in the various situations in which removal is authorized. Moreover, the government has a considerable interest in imposing the cost of removal upon the vehicle owner and retaining possession of the vehicle as security for payment.

Stypmann v. San Francisco, 557 F.2d 1338, 1343 (9th Cir. 1977). While Mr. Long may view the City's traffic code as a legal trifle, the Municipal Court correctly recognized that the City "has an inherent interest in the uniform application of its traffic and parking ordinances." Attachment C, at 13; *see also Jones*, 2006 U.S. Dist. LEXIS 30881, at * 8 (E.D. Mo. May8, 2006) ("the City has an inherent interest in seeing that its parking ordinances—enacted as part of its police powers to regulate traffic—are obeyed."). Mr. Long's reliance on *Bajakajian* in this regard is particularly misplaced because while it is true in that case that taking money out of the country was "permissible," it is also true that nothing Mr. Long did was "permissible" under City law. Mr. Long's "no harm, no foul" approach to the Eighth Amendment is unsupported by case law, ignores the City's substantial interest in enforcing its parking and traffic law, and unsound because if accepted, individuals will be

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incentivized to ignore Seattle's traffic and parking Code, which advances important governmental interests.

Third, Mr. Long claims that the Magistrate required Mr. Long to pay "a sum more than 12 times the amount of the standard fine." Br. at 19. This claim is simply false. It is undisputed that (1) Mr. Long did not have to pay the $44 parking ticket associated with his violation of the 72-hour rule; (2) that he did not have to pay the full amount of what the tow and impound cost the City; and (3) such fees are usually "paid directly to Lincoln Towing by the registered owner (RO) so the impounded vehicle can be released." Attachment B, at ¶ 2. Thus, it is simply inaccurate to claim, as Mr. Long does, that he was required to pay *more* than other individuals are required to pay for the same offense. The record conclusively establishes the exact opposite. What is more, Mr. Long's own authority goes against his view. For example, in *State v. Goodenow*, the court concluded that the even though the maximum penalty for the offense at issue was $500,000, the required forfeiture of $960,843.77, which was nearly *twice the maximum*, did not violate the Excessive Fines Clause. 153 P.3d 8, 28-30 (Or. App. 2012). Here, Mr. Long paid less, not more, than the maximum allowable amount.

Under the factors set forth in *Leatherman*, *supra*, this should be the end of the analysis. Nevertheless, because Mr. Long spills a considerable amount of ink on his personal circumstances, the City will address those arguments, which proceed under the mistaken impression that "[c]ourts *must consider* the individual circumstances of the defendant" when evaluating a fine for gross disproportionality. Br. at 11 (emphasis added). There is, however, a split of authority on this issue.

While some courts analyze the impact any purported "fine" may have on an individual, other courts have rejected such an inquiry. *See, e.g.*, *U.S. v. Dubose*, 146 F.3d 1141, 1146 (9th Cir. 1998) (holding "an Eighth Amendment gross disproportionality analysis does not require an inquiry into the hardship the sanction may work on the offender."); *United States v. Dicter*, 198 F.3d 1284, 1292 n.11

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(11th Cir. 1999) ("we do not take into account the personal impact of a forfeiture on the specific defendant"). Thus, it is not altogether clear whether such an inquiry is constitutionally required or even appropriate. Even accepting Mr. Long's view of the law, he oversimplifies the matter because even his own cases do not support the weight he places on them.

For example, Mr. Long relies on *United States v. Levesque*, 546 F.3d 78 (1st Cir. 2008), to support his argument that courts must consider "individual financial circumstances" when undertaking an excessive fines analysis.[11] What the court actually said was that when a defendant claims "that a forfeiture . . . would deprive the defendant of his or her livelihood," courts should consider that fact, not present financial circumstances, in assessing whether a fine is constitutionally excessive. *Id.* at 84. *Levesque* also noted:

> Although we do not define the contours of this inquiry, we note that a defendant's inability to satisfy a forfeiture *at the time of conviction, in and of itself, is not at all sufficient to render a forfeiture unconstitutional, nor is it even the correct inquiry.* [* * *] Thus, even if a defendant does not have sufficient funds to cover the forfeiture at the time of the conviction, the government may seize future assets to satisfy the order. [* * *] We acknowledge, as the district court pointed out, that even if there is 'no sign' that the defendant could satisfy the forfeiture in the future, there is always a possibility that she might be fortunate enough to 'legitimately come into money.'

Levesque, 546 F.3d at 85 (emphasis added). The "correct inquiry" as the First Circuit would later clarify, is not whether a defendant "had the means to satisfy the judgment" *at the time* it was entered, but rather "whether [his] *post-incarceration livelihood* would be imperiled by the forfeiture." *U.S. v. Fogg*, 666 F.3d 13, 19 (1st Cir. 2011) (emphasis added). Thus, even under Mr. Long's own cases, the key inquiry is not whether he can pay the fee today, but rather whether doing so imperils his future livelihood. The other circuits that have deemed this inquiry relevant to the analysis agree. As the Second Circuit explained:

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[11] *Levesque* acknowledged considering this factor is not mandated by any Supreme Court authority, including *Bajakajian*, but rather from a prior First Circuit decision. 546 F.3d at 85.

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> We also emphasize that asking whether a forfeiture would destroy a defendant's *future* livelihood is different from considering as a discrete factor a defendant's present *personal* circumstances, including age, health, and financial situation. While hostility to livelihood-destroying fines is deeply rooted in our constitutional tradition, consideration of personal circumstances is not.
>
> [W]e hold that courts may not consider as a discrete factor a defendant's personal circumstances, such as age, health, or present financial condition, when considering whether a criminal forfeiture would violate the Excessive Fines Clause. In so holding, we are in accord with every sister circuit that has addressed the question directly.

Viloski, 814 F.3d at 112 (2d Cir. 2016) (emphasis in original; footnotes omitted); *see also id.* at n. 15 (collecting cases). As the Eight Circuit explained: "Even if it appears at the time of sentencing that Smith could not satisfy the forfeiture in the future, there is always a possibility that he might legitimately come into money." *U.S. v. Smith*, 656 F.3d 821, 828 (8th Cir. 2011) (citing *Levesque*).

Even if this Court considers this factor, the relevant question to ask is whether requiring Mr. Long to pay $50 a month for twelve months destroyed his future livelihood? The answer is "No." Mr. Long is tradesman with many skills, from construction, to painting, to automotive repair and he already owns the tools of his trade. Moreover, his vehicle is currently operable, so there should be no issues with him finding future employment. Thus, nothing the *City has done* prevents him from maintaining his future livelihood. The Municipal Court rightly agreed:

> Mr. Long further alleges that in addition to his truck being impounded, his tools were forfeited and he has been deprived of his future ability to earn a living. The evidence in this case clearly does not support that claim. The truck and Mr. Long's tools (or at least some of them) are at a friend's home in Brier. There is nothing preventing Mr. Long from getting those tools and there is nothing in the record to support that he has been unable to work as a result of this incident.

Attachment C, at 14.

When all of this is taken together, one thing becomes clear: Having to pay the fees associated with a tow and impound (indeed, at a steep discount), is not disproportional, let alone "grossly disproportional," as a matter of law, under the Excessive Fines Clause. A contrary ruling would,

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however, endanger the City's (and every other governmental agency in Washington) ability to issue any number of fines and penalties to any person who may not be able to pay the required amount. It is for this reason that the Municipal Court rightly observed that, in effect, "Mr. Long is asking this court to create a particular class or group of persons that can ignore the traffic and parking laws of the City. Such an exemption must be made by the legislative branch of government not the Court." Attachment C, at 13. That reasoning is sound, and should be affirmed.

IV CONCLUSION

For the reasons stated above, the judgment should be affirmed in all material respects.

CERTIFICATE OF COMPLIANCE

I certify that this Response Brief complies with the Court's October 11, 2017 Order regarding the page length for the City's Response Brief.

DATED this 27th day of October, 2017.

PETER S. HOLMES
Seattle City Attorney

By: */s/ Michael Ryan*
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CERTIFICATE OF SERVICE

This certifies that a true and correct copy of this document was caused to be served on the following in the manner indicated below:

Attorney for Appellant: James E. Lobsenz Carney Badley Spellman, P.S. 701 Fifth Avenue, Suite 3600 Seattle, WA 98104	☒ By King County E-Service Notification: lobsenz@carneylaw.com ☐ Via Email Agreement: lobsenz@carneylaw.com ☐ Via ABC Legal Messenger ☐ U.S. Mail ☐ Facsimile

DATED this 27th day of October, 2017.

/s/ Marisa Johnson
Marisa Johnson, Legal Assistant

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EXHIBIT A

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

CITY OF SEATTLE, Plaintiff, vs. STEVEN GREGORY LONG, Defendant.	Citation No. 70836690 Case No. 203641306 DECLARATION OF MICHAEL K. RYAN

I, Michael K. Ryan, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1) I am an Assistant City Attorney for the City of Seattle Office of the City Attorney. I am over the age of 18, competent to testify, and make this declaration based on personal knowledge of the facts stated herein.

2) Attached hereto as **Exhibit A** is a true and correct copy of excerpts of Steven Gregory Long's deposition transcript taken on Friday, March 10, 2017.

PETER S. HOLMES
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3) Attached hereto as **Exhibit B** is a true and correct copy of excerpts of Officer Sara Velling's deposition transcript taken on Tuesday, February 28, 2017.

4) Attached hereto as **Exhibit C** is a true and correct copy of excerpts of Officer Christina Henricksen's deposition transcript taken on Tuesday, February 28, 2017.

5) Attached hereto as **Exhibit D** is a true and correct copy of excerpts of Officer Walker Dickson's deposition transcript taken on Wednesday, March 1, 2017.

6) Attached hereto as **Exhibit E** is a true and correct copy of excerpts of Officer Nicholas Burk's deposition transcript taken on Wednesday, March 8, 2017.

7) Attached hereto as **Exhibit F** is a true and correct copy of the Hearing Transcription dated November 2, 2016, in front of the Magistrate Judge of the Seattle Municipal Court.

8) Attached hereto as **Exhibit G** is a true and correct copy of City of Seattle 72-Hour On-Street Parking Ordinance published on the Seattle Department of Transportation website.

DATED this 31st day of March, 2017, at Seattle, Washington.

Michael K. Ryan WSBA#32091

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(206) 684-8200

EXHIBIT A

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

CITY OF SEATTLE,	) Citation No. 70836690
	)
Plaintiff,	) Case No. 203641306
	)
v.	)
	)
STEVEN GREGORY LONG,	)
	)
Defendant.	)

DEPOSITION UPON ORAL EXAMINATION OF

STEVEN GREGORY LONG

Friday, March 10, 2017

3:05 p.m.

Seattle City Attorney's Office

701 Fifth Avenue, Suite 2050

Seattle, Washington

Laurie E. Heckel, CCR, RPR
Court Reporter
CCR License No. 2616

Friday, March 10, 2017
Seattle, Washington

A P P E A R A N C E S

For the Plaintiff:

MICHAEL K. RYAN
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Seattle, Washington 98104-7097

For the Defendant:

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Seattle, Washington 98104

Also present:

ERICA REDDING
Paralegal
Seattle City Attorney's office

Friday, March 10, 2017
Seattle, Washington

I N D E X

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E X H I B I T S

No.	Description	Marked/ID'd
1	Hearing transcript, 11/2/16	22
2	Photographs (11 pages)	32
3	11.72.440 - Parking Enforcement; Seventy-two (72) hours	59
4	Photos, Certification of Citing Officer, Parking Ticket Comments	68

STEVEN GREGORY LONG

having been called as a witness, was duly sworn and testified as follows:

E X A M I N A T I O N

BY MR. RYAN:

Q Good afternoon, Mr. Long. Would you do me a favor. Would you just please state your full name and spell it for the record.

A Yes. Steven Gregory Long, S-t-e-v-e-n G-r-e-g-o-r-y L-o-n-g.

Q Okay. And, Mr. Long, I know you sat through a couple depositions over the last couple of weeks. Have you ever had your deposition taken before?

A I can't quite recall if they were depositions.

Q Okay. Have you ever testified in any formal proceeding?

A Formal, only sequestering in the jury.

Q Sequestering of the jury, you said?

A Uh-huh (witness nods head up and down).

Q So in other words you were on a -- were you on a panel to be a part of a jury?

A Yes.

Q Okay. And the other day you mentioned something about being a witness for the City?

A Yes.

Q Do you recall that?

A Um, yes, I do. But it happened to be turned around the other

Q Okay. And then where after Butte?
A Back to Montpelier.
Q To Montpelier, okay. And how long did you live in Montpelier that time?
A Maybe a year.
Q Okay. Did you go to high school?
A Yes.
Q Where did you go to high school?
A Both Montpelier, it's called Bear Lake High, and Butte High.
Q Okay.
A And then I opted out of a program -- into a program in the summer for building and engineering to get out of the eleventh -- graduate in the eleventh grade.
Q Okay. And did you -- did you ultimately graduate from high school, get a GED or something like that?
A No. They were going to graduate me, but they give me a B plus passing grade.
Q Okay. Do you have any -- any college or secondary education?
A No, just skilled at work.
Q Okay. And what's your -- what's your -- what's -- what's your skill or your trade?
A There is not one. There is many.
Q Okay.
A Plumbing, electrical, landscaping, painting, machine operator, mechanics.

Q Car mechanic?
A Yes. I did that since I was 13. Many of jobs that I acquired from the age of 15 until I was 18, I just continued on into industry, industry of building homes, libraries, schools, highways, railroads, gas plants, oil fields.
Q So is it fair to say you were in the building trades?
A A lot.
Q Okay. And when did you first come to Seattle, not for vacation or to visit or anything, but just to -- to be here, to --
A I --
Q -- live here?
A I had never been here until August of 1988.
Q Okay. So in August of 1988, you moved to Seattle; is that right?
A Yes. Actually, it was Mountlake Terrace.
Q Okay. And at that time -- I probably should have asked this. Are you married?
A No.
Q Okay. Have you ever been married?
A No, I have two daughters though.
Q Okay.
A Maybe three.
Q Okay. And when you lived in Mountlake Terrace, did you -- did you live in a -- did you have a home?

A No. I was living in the yard in a tent.
Q Okay. And since the time from Mountlake Terrace to the present have you had a home?
A Three --
MS. LoGERFO: Object.
Q (By Mr. Ryan) A piece of real property, a house or apartment or condominium or something to that effect.
A Yeah, three different apartment complexes that I lived in, in Seattle.
Q Okay. And do you consider yourself to be currently homeless?
A Yes.
Q Okay. And when -- when in your mind did you first become homeless?
A March of 2014.
Q And what happened in or around March of -- where were you living in April of 2014 -- I'm sorry -- February of 2013 -- of 2014?
A February, I was living out at the Rainier and Kenyon apartment complex there.
Q Okay. And then what happened that you no longer continued to reside in that apartment complex?
A There were four times -- it came up on the fourth time that I was late with my rent and the management asked -- they said they decided they didn't like to rent to me anymore.
Q Okay. So were you evicted at that point?

A Yeah. Well, there was -- there was a negotiation, but I didn't follow through with the negotiation. So, yes, I was sheriffally (ph), physically removed and evicted.

Q Okay. And since that time of -- where have you been residing?

A In my truck.

Q Okay. So basically since March of 2014?

A Yes.

Q Okay. And do you have -- do you have any -- do you have a criminal record, sir?

A No.

MS. LoGERFO: Objection.

Q (By Mr. Ryan) Have you ever been arrested?

A Years ago.

Q Okay. Can you --

MS. LoGERFO: I'm going to object to this line of question as to relevancy.

MR. RYAN: Okay.

MS. LoGERFO: Okay. Are you willing to limit your questions to a time period or --

MR. RYAN: I would just --

MS. LoGERFO: -- or period relevant to this case?

MR. RYAN: Well, I think it's -- it's relevant to the extent, you know, I want to figure out what the crimes might be to the extent that it was a crime of -- of fraud or

Q 1980.
A Yes.
Q Okay. That's fine. Are you currently employed?
A Yes.
Q Okay. Where do you work?
A It's called -- it used to be Labor Ready and now it is called People Ready.
Q Okay. And could you just briefly describe for me what People Ready is?
A It's a temporary labor agency where you can pick and choose whatever job you like to take as long as you are qualified to do the job.
Q Okay. And how long have you been working with People Ready slash Labor Ready?
A Since September of 1988.
Q Okay. So since 1988 you've been kind of using Labor Ready, People Ready as a way to kind of facilitate your ability to get employment. Is that -- is that a fair characterization?
A Yes, off and on. And periodically there were good stems of employment through their agency that I was able to obtain.
Q Okay. What about since March of 2014, how much have you worked since then?
A I changed to another agency called Labor Works.
Q Okay. But since March of 2014, how much have you worked? Are you working one day a week, two days a week, one day a

month, two days a month? I just want to get a general understanding of how much you're working.

A There was a small stint in 2015 that I worked at Labor Works for Talking Rain in Preston, and I worked there maybe five months.

Q Okay.

A And I was fired from the Labor Works.

Q Do you know why you were fired, sir?

A Yes. I went above the lady's head and got the sheriff onto a situation that arose at the company. During the time I was working there one of my friends were assaulted, and she wasn't doing anything about it. So I took it over to the sheriff and they took care of it.

Q Okay. And is Labor Works similar to Labor Ready and People Ready?

A Yes.

Q Okay. And do you -- for example, do you know how much income you had in -- in 2014?

A 2014, $1,700.

Q For the whole year?

A (Witness nods head up and down.)

Q Okay. What about in 2015?

A Maybe 2,300.

Q 2,300. And what about in 2016?

A 12.

Q And we're talking -- when you're saying these numbers, you're talking in terms of hundreds, 1,200, 2,300?
A Yeah, 1,200.
Q And what about thus far this year?
A I would say maybe 3,000, 2,000.
Q 3 --
A I might be off.
Q So maybe 3,000 this year?
A 2.
Q 2,000 already this year?
A Yeah.
Q Okay. So this year is better than other years.
A No, that's not so. I only got in my first week in of work this week --
Q Okay.
A -- since 20 -- since June.
Q Okay. Now, do you go to Labor Ready -- is it kind of like a -- my dad was a union electrician, right? So he'd go to when the -- he'd go to the union hall and they would send him out to a job. Is -- does People Works or Labor Works work like that?
A Yes.
Q Okay. So do you go every day to see if you can get a job?
A This year, no. My health hasn't been inspiring me to do so.
Q Okay.

A I used to.
Q What about in 2016, if they didn't have a job on a Monday, would you go back on a Tuesday and -- and throughout the week just to see if there was a job any day of the week?
A At times, yes.
Q Okay. At times you would and at times you wouldn't?
A (Witness nods head up and down.)
Q Okay. Do you know -- can you estimate for me how many times in 2016 you went to Labor Works to see if they could place you in a job?
A Oh, I had a steady job for five months.
Q Okay.
A But it was a long drive.
Q Okay. So you had a steady job for five months in 2016?
A No. 2015 and part of 2016.
Q Okay. So you had a steady job for five months, but you only made a total of $3,500 for five months worth of work?
A In 2016, yeah.
Q Okay. I'm -- I'm a little confused, because you testified that you made $1,700 total in 2014. You testified you made $2,300 total in 2015. You testified that you made $1,200 total in 2016. Are those numbers accurate?
A No. On the 2016, I could be mistaken if I'm overriding the job through the year 2016. Let's see, I think it was about

2,300, now that I think about it, in 2016 also.

Q Okay. And, again, just in -- just for 2016 --

A Uh-huh.

Q -- do you -- can you estimate for me how many days you showed up at Labor Works or People Ready to see if you could -- you could find a job?

A Every day through January to June.

Q Okay. And then what happened in June?

A I was fired.

Q Fired from --

A Labor Works.

Q From Labor Works?

A (Witness nods head up and down.)

Q Okay. Was this the incident we talked about a moment ago?

A Yes.

Q Okay.

A But they called me back within a week begging me back. I said until I get an apology, no thank you.

Q Okay. So they offered you to come back and facilitate work for you in June of 2016, and you said not without an apology.

A Uh-huh.

Q Okay? So what --

THE COURT REPORTER: Is that yes?

THE WITNESS: Yeah. Oh, pardon me. Yes.

Q Okay. So since June of 2016, what efforts have you

undertaken to earn income?

A I went to TLC, and there was a lady there that just started up at CenturyLink, which I was mistaken that she said Safeco Field. So I signed up for CenturyLink without knowing that it wasn't Safeco Field because I knew everything about Safeco Field.

Q Okay.

A And the work was only two days a week --

Q Okay.

A -- if we were lucky.

MS. LoGERFO: Mike, can we take a quick break?

MR. RYAN: Sure.

(Off the record.)

Q (By Mr. Ryan) Okay. Now, we just took a break and you met with your counsel. Do you -- do you -- do you want to change any of the testimony you've -- you've given so far?

A 2016, I'm only speculating. I cannot keep up with all the figures of where I worked, how I worked, because there were so many jobs.

Q Okay.

A And I don't know how long a period of time.

Q Can you estimate for me how many jobs you had in 2016, your best estimate as you sit here today?

A Only the two companies that I recall.

Q And is it still your testimony then in 2016 you only earned

Court, you then put your car at Goodwill?

A Yes.

Q The Goodwill down on King Street here in South Seattle?

A Dearborn.

Q Dearborn.

A Yes.

Q Okay. And how long was it there for?

A I went in and asked them if I was able to park there until I looked into the matter of what's a rattle, and there were bad noise in the gears were making on my way up the road. And I estimated a week, but they said if it's longer, let us know, and we thank you for coming in and asking us, and most people would just do it on their own. And I said, yes, I will. I ask always wherever I go most of the time. I won't say most of the time. If I can find the right people to talk to. And within three weeks they said that I would have to move.

Q Okay. Why didn't you just keep the car there?

A Because I was asked to move.

Q Did you sue Goodwill for --

A No.

Q -- not letting you park in their --

A No.

MS. LoGERFO: Objection, argumentative.

Q (By Mr. Ryan) I'm -- it's a question.

A No.

Q Do you believe that you had a right the stay at Goodwill on their property indefinitely?

A Oh, no.

Q So then after Goodwill where did you go next?

A I searched the neighborhood and saw ample places that were parked cars everywhere and campers camped everywhere, and I decided, well, campers are here. I'm a camper. I'll camp here.

Q Okay. Where is, here?

A Where the location was where they impounded it.

Q So you moved your car there in about, what, July of 2016?

A July 5th.

Q July 5th?

A 10:30 at night.

Q Okay. And who did you ask if you could park there?

A At the time that I pulled in there, there were three officers that pulled up and asked if I was okay. There were gunshots. They saw my door open, and I said, no, I'm all right. I didn't hear gunshots. I'm okay. And they said, you ever need anything, just give us a call.

Q Well, my question was a little different.

A Yes.

Q My question was -- a moment ago you said if you were going to park somewhere --

A Yes.

Q -- you would normally ask the owner if you can park there.
A Yes, indeed.
Q So who did you ask if you could park at the intersection of Norman and Poplar? Who did you ask to see if that -- if you could park there?
A I checked with a man that was working, parking there, going to work over at the Landscapes. And he said, I'll go check on it for you. And he came back with the second in charge of the place and said he didn't have no problem with it.
Q What place was that?
A It was called Landscapes or Plantscapes, I believe it was called.
Q Okay. Do you know if -- if Plantscapes owns that property?
A No.
Q Did you do any investigation to determine whether or not that was Plantscapes' property or city property?
A I checked across the street at the storage place, and he said they did not know and it was okay to be there. And also there were other -- man came over and said that he owned the fence and that three other construction companies have their equipments and supplies in the back of the fence and that I shouldn't block their gate.
Q Okay. And then did you move the car?
A Yes.
Q Okay. To where it was the day that you were --

A Towed.
Q -- issued the 72-hour notice?
A Not that day, but, yes, I did move it to that location.
Q Right. Okay. So did you -- did you ever ask anyone from the City of Seattle whether or not you could park where you parked?
A Other than I thought it was all right by the police --
Q Okay.
A -- the first night I pulled in.
Q But the police didn't tell you that night you could park here for as long as you like, did they?
A No.
Q Okay. So you're parked there for -- I'm not good with math, but August, September, three full months.
A Yes.
Q And during that time period did you move your car -- move your truck?
A Once.
Q Okay. And where did you move it to?
A Just forward from where it was.
Q How far?
A 20 feet.
Q Okay. And how were you able to move it?
A Slowly.
Q Well, did the car run?

A Yes.
Q Okay. So was the car driveable? Could you have driven it on the road?
A Perhaps not very far.
Q But -- but you don't know.
A I kind of do know.
Q Okay. What was the matter with the car? You -- you -- you've mentioned before you have a background in car mechanics. So what was the matter with the car?
A The gears were grinding in the rear axle, and to stop from causing more damage I needed to look into it, and as I went online I found out the prices that I would have to pay to fix it, and I wasn't prepared to take it apart and look into it until I had that money available to fix the vehicle.
Q And -- and in your -- by your estimation, what was the cost of the part?
A $1,000.
Q Okay. And during that time what efforts were you making to secure work?
A Hoping that TLC would come through with the job.
Q Any other efforts?
A Not -- well, not really.
Q Okay. So what were you doing? Give me a typical day in your life then.
A Library, Internet, friends, biking the city, helping friends

as they would call and need help or -- or fixing things that they had like washing machines, dryers, bicycles.

Q Doing odd jobs, were you getting paid to do that?

A Not necessarily, maybe food, good friendship.

Q And what exactly parts do you think that you needed for your truck?

A It's called a spider gear.

Q And what does a spider gear do?

A It turns the axles as the drive line turns the spider gears.

Q And it was making noise, but did you ever -- well, let me take a step back. So other than going online and pricing out this part, what other efforts did you take, if any, to fix what you believe was wrong with your truck?

A Only talked to friends and family, and decided I can't tear something apart until I have everything that's needed and required to repair it.

Q Are any of your friends and family mechanics?

A Yes.

Q Did you ever ask any of them to come over and take a look at your truck for you?

A I don't know if they want to come from Montana or Idaho or Arizona.

Q I didn't ask that. I asked did you ever ask them.

A Oh. No, they give me information.

Q So other than just talking to people and going online, what

other efforts did you make to fix your automobile?

A Worry. That was about it.

Q So in other words you didn't make any additional efforts?

A Showed up every time they had a little work for me.

MR. RYAN: I'm going to show you now a couple different photographs.

No, that's not for you.

(Exhibit 2 marked for identification.)

Q Okay. The court reporter handed you -- has handed you what's been marked as Exhibit No. 2. Can you just briefly leaf through these and -- and tell me when you're -- when you're ready.

A Okay.

Q Okay. This first photograph, is this your truck?

A Yes.

Q And I notice there is a lot of stuff around it. I see a bunch of barrels, a backpack, a wheelchair. Are those yours?

A The buckets, yes, they're mine. The wheelchair was brought by a girl that stayed there for about a week or ten days actually.

Q Stayed where?

A She slept on the outside of the vehicle.

Q Okay. And where would you sleep, sir?

A On the front seat mostly.

Q And this little covered area in the back here, this is the

A. Only that I saw something that I disagreed with. I didn't understand and I wasn't able to look at.

Q What -- what do you mean by you saw something you disagreed with before?

A There was a file opened with a 72-hour notice that was appealed and laying on the file, and I don't know anything about that one.

Q Okay. But what about the facts of the events in terms of the interactions with you, is there anything she talked about that you disagree with?

A No, I didn't interact with her at all.

Q Okay. So you never had any interaction with Officer Henricksen.

A No, I never did.

Q Okay. Now, Officer Dickson, do you remember Officer Dickson, tall guy --

A Yes.

Q -- bald head?

A Yes.

Q Okay. Now, Officer Dickson, he talked about the events of that day.

A Yes.

Q Anything that he testified about the interactions that the officers had with you that you disagree with?

A No. I thought they were doing exactly what they said their

job was supposed to be doing.

Q Do you have any issues with them doing their job?

A Not at all. I'm glad to see them doing a good job.

Q Okay. Now, Officer Burke, he -- we talked to him on just a couple days ago on Wednesday. We actually watched a video with him, did we not?

A Yes.

Q Okay. Anything that Officer Burke testified about his remembering of that day or interactions with you that you disagreed with?

A No. But there is -- if I may, there is an overall disagreement that I only had with them not remembering.

Q Okay. And what is that ultimate disagreement --

A When I --

Q -- overall disagreement?

A When I was asked that the 72-hour notice questioning it, they may -- it was iterated to me two or three times they may have come and tow it or they may not. We can't promise you anything. We're sorry that it came to this.

Q Uh-huh.

A And that was the only thing that I know that they may -- they say they may have forgot.

Q Okay. And, in fact, if you look at Exhibit 1, which is your testimony to the Judge, you do mention in there that you believe -- or at least you told the Court that you believe

the officers were -- I think your words were apologetic about having to do the ticket, correct?

A Yes.

Q But you understood at the time that when you got that ticket, that they may come and tow it, correct?

A Yes.

Q And they may not.

A Yes.

Q So it didn't come as a surprise to you that it --

MS. LoGERFO: Objection.

Q (By Mr. Ryan) -- ultimately got towed, did it?

A Oh, it did come as a surprise to me.

Q Why was it a surprising to you?

A There was a few days -- the day that they were supposed to tow it there was a parking enforcement there. I spoke with that person, and they said, oh, you'll know or we'll let you know when they come and get it. We have no complaints against it.

Q Who is that?

A We are looking into that.

Q Who is, we? You?

A Okay.

Q You have to answer.

A Oh, me? Yeah, I --

MS. LoGERFO: Objection --

THE WITNESS: -- I would definitely look into it, yes.
Q (By Mr. Ryan) When you said, we, who is the, we?
A Oh, is it the attorneys?
Q Okay. That's fine. What -- what did this parking -- this parking enforcement officer look like?
A He was African American.
Q Okay. And what did he say to you?
A I asked him -- I know I went up to him and I said, I know I am supposed to move this truck today. Are they going to come and tow it? And the man said to me, he said -- I can't quite recall if he said, you will know if we tow it, or we'll let you know if we tow it. And I wasn't unsure, but I know he wasn't being honest with me.
Q And how do you know he wasn't being honest with you?
A I just have that feeling. I know things.
Q No, no, tell me. Tell me why you have that feeling.
A Just the way the sneered comment that he made it at was not correct, because I couldn't get a definite answer from the man.
Q A sneered comment, did you say?
A Um, kind of, just the way his attitude was towards me.
Q And where -- was he right next to your vehicle when you had this conversation?
A No, he was sitting down the street looking on the computer.
Q Where -- how far down the street?

so I'm sorry the record is a little messy, but we'll --

MR. RYAN: Sure.

MS. LoGERFO: Let's just all try to be clear from here on anyway.

Q (By Mr. Ryan) Okay. So your understanding is that he said to you that you don't have a complaint on it; is that right?

A Yes.

Q Do you know what he meant by, complaint on it?

A No.

Q But at that time you did know, did you not --

A Yes.

Q -- that you would -- that you had already been issued a 72-hour notice for that vehicle?

A Yes.

Q And you knew at that time that it was a possibility that they would come and tow it, correct?

A Yes.

Q Did you have any other interactions with any other parking enforcement officers?

A No.

Q So I'm not sure if I got the answer to this question, because -- but I'll ask it again. Officer Burke, and we watched the video, did you have any disagreements with anything that he said in his deposition about what he recalled about the interactions with you?

Q Okay. Now, I've watched the videos. I -- I didn't hear that question, but -- so tell me exactly what she said to you.

MS. LoGERFO: I'm going to object to your characterizing what you watched in videos that you didn't produce.

MR. RYAN: I've already produced them.

MS. LoGERFO: Are you talking about the ones you've produced?

MR. RYAN: I am.

MS. LoGERFO: You told --

MR. RYAN: Did you hear it in --

MS. LoGERFO: You told him previously that you had been watching other videos and I was --

Q (By Mr. Ryan) Did you -- did you hear it in there? So --

A Oh.

Q Because you saw the video.

A Yes.

Q You watched the video.

A Yes.

Q Did you hear her ask you that question on -- on that audio?

A Not on the audio, but I know that it -- she was -- that someone asked me.

Q Someone asked you. Who was it? Was it Officer Velling? Was it Officer --

A I don't recall, but it was brought up in the conversation.

Q So your testimony as you sit here today is somebody asked you

if you were living in it and you answered yes, but you can't recall what question they asked you or who the person was who asked you the question; is that correct?

A I knew what question they asked, kind of ashamed to say, yes, I'm living in my vehicle.

Q Okay. Again -- but do you know who asked you that question?

A I'm not remembering who asked that.

Q How long were your conversations with the police officers on October 5th?

MS. LoGERFO: Objection, he already said he can't recall. Answer.

Q (By Mr. Ryan) Do you -- do you recall how long the conversation took?

A There were several times I walked back and forth and the conversations probably went anywhere from five to ten minutes at a time of three perhaps different times.

Q Okay. So can you just in basic terms recall what you remember from that day vis-a-vis these conversations with police officers in terms of how is it you first came to see that they were there to the last time you said goodbye.

A I was sitting --

MS. LoGERFO: I'm going to object again to the extent he's already said he can't remember much of this -- these conversations and some of the events, but to the extent --

THE WITNESS: Uh-huh.

MS. LoGERFO: -- that you now remember something that you haven't already testified, and again --

Q (By Mr. Ryan) Yeah, I don't want to do a memory test. I want to know what your best recollection is. I want to know what you remember.

A Sure.

Q So if you don't remember, that's fine.

A No, I do remember. They asked if I would step out from the vehicle and -- and they walked and approached me and I were told that I see you have a knife. We need you to have your hands out, and I obliged. And something to the fact that there was an altercation, and asked if I had pulled a knife on anyone. And I said no. And they had a complaint. They had to come in and look into it. Then more conversations were of my employment, how long I'd been there. They had to go and decide what they were going to do. Came back, let me know that they were having a parking enforcement come out and put a tag, a 72 hours notice. And I asked why. I have no where to go. I can't move it. It is broke down.

And then they said, well, we have to wait here while the parking enforcement gets here. Go ahead and do what you were doing. I went back to my truck, did some things, walked back out. Said I have to go get coffee. Came back around. They're still waiting. We may have had a few other conversations, and then I stepped away and went about my day

as the parking enforcement hadn't got there.

Q You said you may have had other conversations. Do you recall those?

A Just friendly gestures back and forth.

Q So when they approached the car, were you inside the vehicle or in this little kind of tarped off area?

A I was under the tarp.

Q Okay. So then you came around the back of the truck.

A No, the front.

Q The front. Okay. So you came where the wheelchair is you came through?

A No. That's usually not there, only if I'm not going to be there.

Q Okay. So you walked around this way and then came out and met the officers at the front of the car basically.

A On the long side of it, yes.

Q Okay. So on the driver's side.

A Yes.

Q Okay. And they met you -- you did have a knife on you, correct?

A Yes, yes.

Q And it was visible in your pocket?

A Yes.

Q Okay. And they did inform you that there had been a complaint by someone in the area about someone associated

with that truck threatening someone in the area with a knife either the day or a day before that, correct?

A Yes.

Q Okay.

A Oh, two days.

Q Two days, right. And what did you tell them about that incident?

A That I was accosted by a young man that came across us and just he was out picking up trash. And he approached -- prior to that. I have to back up. A friend and I were working, cleaning tools. I explained that to them, because when they asked about the knife altercation I explained that the tools we were cleaning, there was a knife. There was -- the blade was broke. I couldn't fold it. It was laying on the truck that day. And there was somebody picking up trash. He was quite a distance away. I went to sit down. I told my friend get down, get down. I didn't want him to see us. The man saw us and he started barking at us calling us pigs and slobs and homeless trash, and just rude insinuations on the continuum.

And then he walked over. I had to tell him you don't know who we are. You don't know what we do. You don't know where we come from. What are you talking about. And it continued and continued with that. And as I was watching him, I guess -- I explained to the officers that my friend

may have picked up his knife. And then the guy just ran over to the truck, spit on the truck, spit at my friend, oh, you're going to stab me now; you're going to stab me now. And I said, no, nobody is getting stabbed here. I didn't see what my friend had done. I was just keeping my eye on the other guy. I'm in front of the truck. My friend is on that side. I'm on -- or he's on this side.

Q Okay.

A Finally, another gentleman comes over and calms us down and, what are you doing to these guys, he's asking this man. I know these guys. They're good people. He come out and helped us pick up trash and do all kinds of things around here. They're good people. What's wrong with you. And then just went on from there. And my friend, I told him now I'm in all kinds of trouble I don't like to see. He went and resolved it with the other man. They went and cleaned up the garbage and they worked along and got together, and I thought that was going to be the end of it. That's what I told the officers.

Q So you told the officers that entire story.

A Oh, a lot more, yeah.

Q The -- the spitting.

A Yes.

Q The --

A Yes.

Q The -- all of that.
A Yeah.
Q So that should be on --
A Yes.
MS. LoGERFO: Object.
MR. RYAN: That should be on the video?
THE WITNESS: I hope so.
Q (By Mr. Ryan) Okay. So what's -- who is this young man that you're referring to?
A Somebody with a horrible tattoo and yellow skin.
Q Okay. What -- what was he doing cleaning up trash or picking up trash? Do you know who he was, where he worked? Did he work anywhere?
A Evidently, he may have came out of the Boulder project.
Q And who was your friend?
A He's a very good friend of mine from Nepal.
Q What's his name?
A Kharka Kalkote.
Q I'm going to need a spelling on that.
A K-h-a-r-k-a K -- Kalkote is K-a-l-k-o-t-e or i-e.
Q And do you know one way or the other whether your friend did or did not pull a knife on this gentleman?
A No, I don't know.
Q And was your friend living with you in the vehicle?
A Oh, no, he comes to visit and we hang out together.

Q Does he come regularly for a visit?
A Yeah, oh, yeah, stays two or three nights at a time and goes home.
Q So he stays with you on the truck?
A On the weekends, yes, and he's -- him and his friends, they've -- we've all shared living in my truck together. It's been good.
Q So when the officers mentioned that there had been an incident with a knife, you don't dispute that there was -- there may have been an incident with a knife, correct?
A No, I don't dispute it.
Q And then --

MS. LoGERFO: If you could give me a minute to object for the record. I object to that question as to what incident with a knife means. But if you understood it you apparently answered it, but if you could give me a minute to respond that would be great.

Q (By Mr. Ryan) Okay. So you had this interaction with the officers and you told them, and correct me if I'm wrong, that -- that the truck needed a part, correct?
A Yes.
Q Did you tell them what part it needed?
A I do believe I told them it was in the gears.
Q And you -- and they said I understand that, but we still have to put the 72-hour sticker on this car. They said that or

something to those -- to that effect, correct?

A Yes.

Q And then you -- you did tell them that you would make an effort to get that part to move the car, correct?

MS. LoGERFO: Objection, misstates his testimony.

Q (By Mr. Ryan) Did you tell them that you would make an effort to get a part to fix your car?

A I was sure hoping to --

Q Okay.

A -- get the parts.

Q So what efforts did you make after you received the 72-hour sticker to the 140 hours later when it was towed? What efforts did you undertake to get that part?

A Count my money.

Q Anything else?

A Just counted the money and come up short.

Q Did you call any friends and ask them to help you out?

MS. LoGERFO: Objection, he's already answered this line of questioning earlier on in the deposition.

Q (By Mr. Ryan) Did you call any friends during that time period to see if they could help you out?

A The -- it was offered to have it fixed if I had a job.

Q Who offered you to have it fixed?

A Peter's Place.

Q Okay. And why didn't you take them up on their offer?

A The job I had, it wasn't ready to go to. I was offered a job to work on the apartment complexes, and I looked at the state of my truck. I couldn't take the job.

Q Why couldn't you take the job?

A I can't show up to the apartment complex in a truck with a lot of junk on it.

Q But you --

A High end job, high end complex, you can't show up like a hillbilly.

Q But you had the -- there was a job offered to you --

A Yes.

Q -- that would have given you money --

A Yes.

Q -- to buy the part to move the car, and you did not take the job. Is that your testimony?

A No, I got the job in June.

MR. RYAN: Do you want to take a minute? I'm -- I'm confused.

MS. LoGERFO: Yeah, yeah.

MR. RYAN: Let's do that.

(Off the record.)

Q (By Mr. Ryan) All right. Mr. Long, we just took a break. I don't have that much more for you. But is there anything about your testimony from the time we took the last break that you want to change?

A Just the point that I had done things to reserve a place or look for a place to put the truck to get assistance with the truck, and what was there evidently wasn't there, they tell me, at Peter's Place.

Q So you looked into trying to see if you could locate the car somewhere on Peter's Place property?

A A program that had safe parking. And the lines were never answered and the program was discontinued and another place was too full.

Q What other efforts did you make to see where you could put your car? Did you call any of your friends who live in the area to see if you could put it in their driveway, park it near their house or anything like that?

A Not at that time.

Q Okay. Why not?

A I've been taught to be self-sufficient and take care of myself.

Q So they placed a sticker on your car, correct?

A Yes.

Q And you told the Court that you took it off, correct?

A Yes.

Q Why did you take it off?

A I'd see everybody else do it. I thought it's reasonable to do.

Q Were you hoping that if you took it off that they might not

come back and tow it?

A It might have been that they may and they may not.

Q And they didn't come back after 72 hours, at 72 hours, did they?

A No.

MS. LoGERFO: Object --

Q (By Mr. Ryan) They came back a week later. Yes?

MS. LoGERFO: Objection as to who you mean by, they.

MR. RYAN: Sure.

MS. LoGERFO: He earlier testified that he saw parking enforcement in fact 72 hours later, so if you can be more clear on that.

MR. RYAN: Sure. The -- let's just hand you -- let's just mark this next in line.

(Exhibit 3 marked for identification.)

Q (By Mr. Ryan) Okay. The court reporter has handed you what's been marked as Exhibit No. 3, and I will represent to you that this is a printout of Seattle Municipal Code -- Seattle Municipal Code 11.72.440 entitled, Parking Enforcement; 72 hours. Does that look like what this is, sir?

A Yes.

Q Okay. Now, you understand that the officers at the time they gave you the sticker to put on -- a sticker was put on your car by the parking enforcement officer, they explained to you that it was not legal in the city to park on city property

property.

Q (By Mr. Ryan) Say what?

A I'm still confused about who attached themselves to the property.

Q And do you recall having a conversation with the Judge, whether or not the Judge asked you if you made any efforts to determine whether or not this was or wasn't city property?

A Do I remember?

Q Having a colloquy, a discussion with the Court that, you know, did -- do -- what -- what did you do to figure out whether this was or was not city property?

A I don't recall, but I do recall what I did do is talked with three construction companies. They said park here. Leave everything here until they drag you out of here.

Q And at one point the Court asks you if you get it out of tow or out of impound, this is at the top of page 13, the Court says: If you get it out, where is it going to go?

Do you recall the Court asking you that question?

A Yes.

Q And you testified: I have two other places to go put it on, two friends' properties.

Is that what you told the Court?

A Yes.

Q Okay. So where are -- who are those friends? What are their names?

A Christian Hansen.
Q Okay. And --
A And -- he's Hawaiian and his name is always catching to me. Moloni Aho.
Q I'm not going to ask you to spell that. But how long have you been friends with these folks?
A I met Moloni last summer, and Christian Hansen and I have been friends for -- since 2005.
Q Why didn't you ask them once you got the 72-hour notice whether you could bring the car to their property then?
A I didn't feel it would make it to their property at the time.
Q What do you mean? Did you try to make it to their property?
A No, I didn't want to even consider driving it --
Q Okay.
A -- causing it more damage than it may already have.
Q So -- but you never even asked the question whether or not you could take it to their property?
A Not until after it was towed.
Q Okay. So do you feel that as of -- on the day that you got the tow that you had no other place to take your car?
A No, I didn't.
Q No, you didn't have any other place to take it, or --
A I didn't --
Q -- you didn't bother to ask anyone if you could take it there?

MS. LoGERFO: Objection.

THE WITNESS: I didn't have any other place to take it.

Q (By Mr. Ryan) Why not?

A Because it wouldn't get there.

Q Well, let me ask you this: When the car was towed and then it was put in impound, correct?

A Yes.

Q Where is the impound lot?

A In Aurora.

Q Where on Aurora?

A On 129th.

Q Where is the car now?

A It's in -- what's that called? Brier.

Q Brier?

A Brier.

Q Where is Brier? Is that a neighborhood in Seattle or is that --

A East of -- or west of Kenmore.

Q West of Kenmore. How did you get the car from the tow lot to Brier?

A Magic, you know. I like it. I had hopes and prayers that it would get there, and I know by putting it in four-wheel drive it takes the ease off the rear gears. However, during their motions of pulling and tugging and whatever they did for the six hours it took them to get it out, inexperience, I'm sure,

that they jammed something back together with the gears and it worked.

Q So you're say -- your testimony is as you sit here today --

A Yes.

Q -- is that the tow fixed your car.

THE WITNESS: Yeah, well --

MS. LoGERFO: Objection.

MR. RYAN: That's what I just heard.

MS. LoGERFO: Objection.

THE WITNESS: No, no, I don't know for sure.

MS. LoGERFO: That's not what you heard and that's not what he said.

THE WITNESS: I don't know that for sure, but evidently it got me to put it where it needed to be and I have to still look into it to see what is broken on it.

Q (By Mr. Ryan) Where is it now?

A In Brier.

Q Where in Brier, on the street?

A At Christian Hansen's yard.

Q Okay. So at someone's yard.

A Yes.

Q And you didn't ask Christian Hansen between the day you got the 72-hour notice and the day that it got towed whether you could put it on Mr. Hansen's property, correct?

A Correct.

Q And in fact -- but when you did ask Mr. Hansen he agreed to have you put it on his property, correct?
A Yeah, I thought it was going to be a month.
Q But it is there now, yes?
A Yes.
Q Okay. So you don't know one way or the other, had you asked Mr. Hansen earlier, whether he would have agreed to take your car prior to it being towed, correct?
A Correct.
Q Okay. How many times did you start the car and attempt to move it during the period between when the 72-hour notice was issued and when it was towed?
A I started it several times to see that the battery was charged and I never got it in gear.
Q Okay. So you made no effort to move it at that point; is that correct, between when you got the -- when you got the sticker and you got the -- the notice and when you were ultimately towed, during that time period, you made no effort to see if the car would run -- would not run but would --
A Move.
Q -- move, correct?
MS. LoGERFO: Objection, he's already testified on this repeatedly.
THE WITNESS: Correct.
Q (By Mr. Ryan) So you don't know one way or the other whether

or not it was something that the tow people did in moving this car around that got the gear back into place, or if the car would have ran and moved just fine independent of the tow, correct?

MS. LoGERFO: Objection.

THE WITNESS: Prior to that, yeah, there was a 20-foot move and it was still making a real bad noise.

Q (By Mr. Ryan) Prior to that. How -- how long prior to that?

A September.

Q But you'd agree that you're speculating to the fact that something the tow truck driver did or the towing company did somehow made your car able to move better than had they not it. That's pure speculation, correct?

MS. LoGERFO: That misstates his testimony, objection.

THE WITNESS: I would say I got lucky that I was able to do that.

Q (By Mr. Ryan) So I just want to get it clear. During that time period when you got the notice and the car got towed, you'd never once attempted to take it on a test run.

A I thought about it. No, I didn't.

Q And you didn't ask Mr. Hansen if you could put it on his property in Brier, correct?

A Correct.

MR. RYAN: Now, let me -- let me hand you what's been --

(Exhibit 4 marked for identification.)

Q The court reporter has handed you what's been marked as Exhibit 4, and I will represent to you that this is a packet of information that your counsel provided to me that you received from the City of Seattle. Does this look like what you received from the City of Seattle prior to your court hearing?

A Yes.

Q So let me just take a step back. So the car was towed on October 12th, correct?

A Yes.

Q And you testified a moment ago it took about six hours to tow the car?

A Someone had told me that. I don't know.

Q You don't know. So you weren't there.

A No, I was not there.

Q Okay. Where were you?

A I was working at CenturyLink Field.

Q So who told you that it took them that long to move the truck?

A One gentleman in the neighborhood, and then I heard it during one of the depositions.

Q And -- and tell me what happened when you came back and it was gone.

A I got off at 10:00 o'clock and I get back at midnight. There was a man standing there looking over. A young kid wanted to

know if he could have my bikes, and I looked around. I was in total shock. I looked around and looked around and just walked around for 30 minutes in shock. I didn't know what to do, what to do. It was downpour rain, freezing cold, midnight, and the only thing I could do is ask the man to leave. I want to be left alone. He said I'm here at your services, whatever you need. I said, just please go away. I want to be left alone.

Then I got busy and started building a shelter with the tarps that was left there. I was able to get somewhat of a thing, but it was nowhere to sleep. And by 3:00 in the morning I was tired, exhausted and had to be to work at 8:00. Wasn't even thinking about the job the next day, and I had to go to Peter's Place soaking wet cold. Asked them if they had a blanket, and they didn't have one. I asked them if I could come in and stay warm. They allowed me to come in to get warm. I had to leave at 7:00 in the morning. I'm still wet. So I was able to go back and finish putting everything inside the shelter that I had to put up in order to stay somewhere and protect all of the things that were left behind. And then I had to go to the Goodwill and buy me a new coat and a blanket.

But prior to all of that, I did call the police and asked them if the truck had been impounded or taken, and they did identify Lincoln Towing as picking it up, but it took

them a long time. And my phone was shut off that night, so I had no service but 911, and they wanted me to call them back and they said we'll keep you on the line.

Q Okay. So you call the police and they tell you it has been towed.

A Yes.

Q And what do you do next? I mean, in terms of with respect to getting your car, your truck back?

A I'm lost. Oh, yes, I called the tow yard, asked them what they take, how much it was. I believe I called them. Oh, I called them and then I was able to go sign papers and have a hearing, and then I went before the Judge.

Q Okay. Well, let me -- when did you first contact Columbia Legal Services, or did they contact you?

A Oh, yes, I --

MS. LoGERFO: Objection.

THE WITNESS: That's confidentiality? I did.

Q (By Mr. Ryan) I just want to know -- I just want to know how you guys got in touch with each other. That's all.

A I walked into their office.

Q What day?

A It was a Friday, the day after that Wednesday when they took the vehicle.

Q Okay. And what did you -- or when did -- I don't know when your attorney/client relationship started, but I'm not -- I'm

not going -- I'm not going to go down this road, so don't worry about it. But what I want to get a sense of is so the -- the car was towed on a Wednesday or no? What day of the week? Did we --

A The 12th would have been a Wednesday, I think.

Q Okay. So you contact Columbia Legal Services a couple days later.

A Yes.

Q Is that right?

A Yes.

Q Okay. And I don't want to know any conversations you had with them, even if no relationship existed. I don't want to know about it. But did you ultimately sign some form of an agreement with them --

A (Witness shakes head back and forth.)

Q -- as to they would represent you?

A No.

Q Okay. So as you sit here today, you don't think they're your lawyers?

A Oh.

MS. LoGERFO: Objection --

MR. RYAN: Yeah, let's -- you can -- you can talk on this one.

THE WITNESS: Not on the Friday.

MR. RYAN: Okay.

MS. LoGERFO: Are we going to keep asking these questions?

MR. RYAN: All I want to know is when the attorney/client relationship, the date it was established. And if you want to just tell me, represent to me when it was, then I could use that as fact moving forward --

MS. LoGERFO: Okay.

MR. RYAN: -- that's fine. But if not, I -- I need to just to know the date that it was established.

MS. LoGERFO: We began providing limited -- at least limited representation to Mr. Long on the date he came into the office.

Q (By Mr. Ryan) Okay. So on Friday, the 12th --

A No. The 12th was the day they took the truck away.

Q Okay.

A It would have been three days, two days after that.

Q Friday, the 14th.

A Yeah.

Q Okay. Is when you began being represented by --

A No.

Q -- Columbia Legal Services.

A No, they were all out of the office. I had to come back on a Monday.

Q Okay. Let me ask you this: You -- take a look at Exhibit 4.

A Uh-huh.

Q You made a request of the City Attorney's Office for discovery.

A Yes.

Q I don't want to know anything your lawyers told you. But all I want to get a sense of, at the time you made that request, did you have an attorney?

A No.

Q So on the 20th of October you did not have an attorney?

MS. LoGERFO: Wait. Hold on. When was the discovery request?

MR. RYAN: I just said. Look on the second page. He signed it on the 20th.

THE WITNESS: Third page.

MR. RYAN: Second page.

THE WITNESS: The --

MR. RYAN: Second page.

MS. LoGERFO: Well, I don't -- I'm not sure I understand what -- what we're doing here. Do you --

MR. RYAN: It will become apparent in a minute. I just want to know --

MS. LoGERFO: I mean, I'm not -- I'm not sure that my client remembers the exact sequence of events. I've represented to you that when he came into our office we began limited representation of him as to this matter. As you can see, we did not represent him at the hearing.

A I can't recall exactly.

Q Okay. Did anyone ever tell you what you should tell the Court when you went to the hearing?

A At one time.

MS. LoGERFO: Objection to the extent this calls for privilege. I don't think we know without Jim in the room what -- what we're dealing with here in terms of privilege.

Q (By Mr. Ryan) Well, Jim is in Africa right now and won't be back for a month, and briefs are due before Jim is back.

MS. LoGERFO: Well, we can wait until he gets back and -- and continue Mr. Long's deposition.

MR. RYAN: We're not going to do that. That's unnecessary.

I'm just -- I don't -- I don't need to belabor the point, sir. But I'll -- I'll move on in the interest of shortness of life. Okay. So can you take a look at page 11.

THE WITNESS: On Exhibit 1?

MR. RYAN: I'm sorry. On Exhibit 4.

THE WITNESS: I'm looking for the page numbers.

MR. RYAN: It's marked at the bottom, COS. Is that your signature at the bottom of that document?

THE WITNESS: Yes.

Q (By Mr. Ryan) And is this your e-mail address?

A Yes.

Q And did you fill out this document or did you have anyone

A Due to the fact that I didn't know which property I was on and how far off the street it was.

Q Any other reasons?

A Oh, yeah, to get my truck, my home.

Q Okay. So to date --

(Nonverbal communication between Ms. LoGerfo and the court reporter.)

MR. RYAN: I'm sorry?

THE COURT REPORTER: She asked if I got that. The answer was, "Oh, yeah, to get my truck, my home." She asked if I got his --

MR. RYAN: Okay.

THE COURT REPORTER: -- complete testimony.

MR. RYAN: Sure.

THE COURT REPORTER: Go ahead.

Q (By Mr. Ryan) Now, how much to date have you paid related to this ticket and impound?

A Just on the ticket and the impound?

Q Yeah.

A I believe it was probably $50 every month.

Q Okay. But the Court below waived the ticket fee, correct?

A Yes.

Q Okay. And did the Court below set up a payment plan to get the car out of impound?

A Yes.

Q And when did you get the car out of impound?
A The day they set me up the payment plan.
Q What day was that? Was that December 2nd, the same day as the court hearing or --
A Yes, same day.
Q Okay.

MS. LoGERFO: Just to clarify for the record you just asked if that was December 2nd?

THE WITNESS: Oh, November 2nd.

MR. RYAN: Okay. Sorry. November 2nd. Sorry. Thank you.

THE WITNESS: Thank you.

Q (By Mr. Ryan) Okay. So you got the car out on November 2nd. Tell me how it got out.
A Oh, my. Took them two hours. They didn't want to let it go. They had it up for auction on the 5th, and they weren't sure. They were not going to let it go. It took me over one hour in the office for them to clarify and rectify the paperwork. And I waited out in the yard for another tow truck driver to move another vehicle to get it out of the way. And he stated that the markings on the back was set up for auction. It said, A 11/05. They were going to sell it on that Saturday. And they finally moved everything and wanted to know if I could drive it. I said I'll try.

They disconnected the gears up underneath, so I had to

crawl under it, but I had to have the tow truck driver pull it out so I could go under and connect the gears, started it up and put it in four -- four-wheel and it backed out, turned around and drove it out of there.

Q Okay. And where did you drive it to?

A To my friend, Christian Hansen's, in Burien.

Q Okay. How long of a drive was that?

A I stopped three blocks away into a parking area to park to listen to it to see if anything was making noise or breaking, and it seemed to be okay, just to make sure. And the drive was 20 minutes.

Q Longer than a 100 block of the city.

A Yeah, the City, they just come and get it again.

Q So what -- what were you going to do if the car didn't start?

A Leave it there. See what they would charge me to tow it.

Q To tow it where?

A To my friend's house.

Q Okay. Did you ever look into towing it to your friend's house in between the time you got the 72-hour notice and when your car got towed?

A Thought about it, but I didn't have no money to even think about going to do so.

Q And how did you acquire the money between October 12th, the day it was towed, to November 2nd, when you said you would have inquired about hiring a tow truck driver to tow it away?

A How would I --
Q How would you have paid for the tow that day?
A Oh, that day I would have borrowed it from somebody. I don't know. I really don't know. I'm just speculating.
Q Okay. So you were just really hoping it worked that day.
A Yes. It was -- my attorney said how are you going to get --
MS. LoGERFO: Object.
THE WITNESS: Wing and a prayer.
MS. LoGERFO: Object.
THE WITNESS: A wing and a prayer.
Q (By Mr. Ryan) Well, it worked.
A Yes, it worked.
Q All right. I'm going to wrap up here. So do you believe that you have a right to park your car or your truck on city property?
MS. LoGERFO: Objection, vague as to, right.
THE WITNESS: I was --
MS. LoGERFO: What do you mean by, right?
THE WITNESS: -- a taxpayer. I believe so.
Q (By Mr. Ryan) Do you believe you have the right to park your car on city property for more than 72 hours?
MS. LoGERFO: Same objection as to what you mean by, right.
THE WITNESS: I would only speculate. I wasn't parking. I was living.

Q (By Mr. Ryan) Okay. So if I'm hearing you right, that it's your -- it's your understanding that if you're living in your vehicle you have a right to park your car on public property for as long as you like?

MS. LoGERFO: Objection, he didn't say anything about a right.

THE WITNESS: As long as they look into the matter and there were people that were encouraging me to do so, I would do so.

Q (By Mr. Ryan) I'm -- I don't follow your answer. Encourage you to do what?

A To park there and leave it there and --

Q Who --

A -- help -- help me out.

Q Who from the City of Seattle encouraged you to park there?

MS. LoGERFO: Objection, asked and answered I think multiple times now.

THE WITNESS: No, just there was no objection the first night I parked it there by the police, and there was three other people that said it would be okay there, not from the City though.

Q (By Mr. Ryan) What do you -- what do you believe the City did wrong in this case?

A Took it upon themselves to believing as a human being that I had a complaint against me for something, some crimes that I

did not do.

Q So it -- so you don't think that towing your car was wrong. It's just you think that them believing a story someone else told them about you was wrong.

A Oh, yes --

MS. LoGERFO: Objection --

THE WITNESS: -- towing my car --

MS. LoGERFO: Object, objection, that was not his complete testimony. Misstates what he just said. Go ahead.

THE WITNESS: There was -- towing my car was absolutely wrong. I was living in it, and the circumstances that I was under at the time, they were apologetic for it and --

Q (By Mr. Ryan) Why is towing your car because you're living in it, in your own words, wrong?

A Because I have nowhere to go and no place to shelter myself, my belongs, my livelihood, all my work that I do.

Q Couldn't you have turned the car on and see if it worked, sir?

A Well, I already knew that it didn't at the time I put it there.

Q But it did work at the time it was in the impound lot, yes?

A Yes.

Q And couldn't you have called your friends or others to see if they might be able to help you out and you didn't do that, did you?

MS. LoGERFO: Objection, this is argumentative. He was already asked this exact same series of questions and given you this testimony.

THE WITNESS: I didn't need to at the time because I thought I was going to handle it okay.

Q (By Mr. Ryan) And what efforts did you undertake to handle it?

A To go and seek out a places to park it, to go out and seek places to fix it, and just waiting for the right work and the right amount of income to work on it.

MR. RYAN: Give me a couple minutes.

MS. LoGERFO: Sure.

(Off the record.)

Q (By Mr. Ryan) Mr. Long, we took a brief, short break. Is there any of your testimony from the last break to this break that you want to change?

A I forgot.

Q I'm sorry. Was that I forgot?

A I forgot what I was going to -- oh, the -- the -- I misunderstood. One of your question was if anybody could just leave things around my vehicle. Wheelchair, I took possession of, and the bicycles, they were going to be moved around, but there wasn't just that anybody could leave anything there. That's what I misunderstood when you asked that or not.

Q Okay. Anything else?
A Excuse me. And the income that I'm -- this year I'm unclarified on. I couldn't keep up, which is sad.
MR. LoGERFO: Mr. Ryan, you can -- you can continue to ask him about -- about his testimony, but I am going to ask him a couple questions.
MR. RYAN: Sure. I've still got just a couple close-outs here, and then I may have follow-up.
MS. LoGERFO: Thank you.
Q (By Mr. Ryan) So the court below or the court -- municipal court waived the parking ticket, correct?
A Yes.
Q And then the Court put you on a payment program, correct?
A Yes.
Q And you have to pay -- is it $50 a month?
A Yes.
Q For how many months?
A I have it printed out here somewhere. Until the 700 and something is paid. Printout, printout, printout, oh, that's in another file, I believe. Seems like a year and a half.
Q How much have you paid so far?
A There is only -- I think it was, like -- I'm -- I'm -- 300.
Q So you were able to get your car out of impound with -- on basically an agreement to pay?
A Yes.

Q And what happens if you don't pay? Do you know?
A They -- they told me that there would be a $25 -- $25 fine or fee or -- then they send it to collections, and I'm -- I'm not sure. That's the only thing I heard.

MR. RYAN: Okay. That's all the questions I have for right now. I understand your counsel may want to ask you a couple follow-ups.

E X A M I N A T I O N

BY MS. LoGERFO:

Q Mr. Long, you were asked earlier whether you disagree with anything that Officer Velling said at her deposition. Do you recall every single thing Officer Velling said at her deposition?
A No, I didn't.
Q You were asked if you recall everything -- excuse me -- you were asked if you disagree with anything Officer Burke said at his deposition. Do you recall every single thing Officer Burke said at his deposition?

MR. RYAN: The one that -- I think those misstate -- both of these misstates the nature of my question. What I did ask was if he disagreed with anything that those officers testified about, about the interactions between those officers and Mr. -- Mr. Long.

MS. LoGERFO: Well --

MR. RYAN: So it's a little different. But that's fine.

the -- on a police video more or less. Do you have any knowledge of what would be picked up on a police video?

A Not that I know, no.

Q Okay. Earlier you testified something to the extent that you thought the police were doing a good job or done a good job or -- or just doing their job in -- in calling for a parking officer ticketing your car. What did you mean by that?

A I didn't mean that they were --

MR. RYAN: Asked and answered.

MS. LoGERFO: What did you mean by that?

MR. RYAN: And leading.

THE WITNESS: The -- I felt they did a good job as what their duties detailed them to do, but it wasn't a good job on their part to take somebody's home, which they were apologetic for. I mean, I'm not saying -- I'm -- that sounds misphrased. I don't think they did a good job by taking the vehicle.

Q (By Ms. LoGerfo) Do you have expenses for things other than food and the items you mentioned such as clothes?

A Yes, I forgot clothes. I do buy clothes.

Q Toiletries?

A Toiletries.

Q Items to be used for cooking?

A Yes, items, gas, food, paper plates, paper cups, paper towels.

Q Do you have any medical issues that cost any money?
A Not yet.
Q Are you saving money to pay for medical issues?
A No.
Q Have you in the past thought about trying to save money for medical issues?

MR. RYAN: Objection, leading, come on. I mean, you're laughing at the end of this. You know what you're doing. That's leading.

THE WITNESS: I --

Q (By Ms. LoGerfo) Mr. Long, do you have any dental issues?
A Yes, I do, oh, my goodness.
Q Okay. All right. Have you tried to save money in the past to pay for your dental issues?
A No.
Q Do you need to pay for dental issues?
A I think I'm covered on the insurance. I just don't want to die on the table getting teeth pulled. When I thought of that, that's when the gears in the truck went out. I was on my way to the dentist.

MS. LoGERFO: I think that is it.

MR. RYAN: I'm good.

(Whereupon, at 5:20 p.m. the deposition was concluded.)

(Signature was reserved.)

EXHIBIT B

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

CITY OF SEATTLE, Plaintiff, vs. STEVEN GREGORY LONG, Defendant.	)	NO. CASE NO. 203641306

DEPOSITION UPON ORAL EXAMINATION OF OFFICER SARAH VELLING

TUESDAY, FEBRUARY 28, 2017
701 FIFTH AVENUE, SUITE 3600
SEATTLE, WASHINGTON 98104
DEHUFFDEPO.COM

C O R R E C T I O N S H E E T

Please carefully review the preceding transcript and note any and all corrections to those statements made only by you and not those of others, on this sheet. Return the original Correction Sheet within 30 days for inclusion with the original transcript, to: DEHUFF DEPOSITION REPORTING, LLC, 17314 Southeast 346th Street, Auburn, Washington, 98092.

PAGE LINE SUBSTANCE OF CORRECTION AND REASON THEREFOR:

_____ _____

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E X A M I N A T I O N I N D E X

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E X H I B I T I N D E X

NUM	DESCRIPTION	MARKED
1	10/5/16 SEATTLE POLICE DEPARTMENT CP 2016-361443	15
2	10/12/16 BLACK AND WHITE PHOTOS	46

BE IT REMEMBERED, that on Tuesday, February 28, 2017, at 12:24 p.m., at 701 Fifth Avenue, Seattle, Washington, the deposition upon oral examination of OFFICER SARAH VELLING was reported by CARRIE J. DEHUFF, Court Reporter in and for the State of Washington;

WHEREUPON, the following proceedings were had; to-wit:

OFFICER SARAH VELLING, being first duly sworn by the Court Reporter to tell the truth, testified as follows:

EXAMINATION

BY MR. LOBSENZ:

Q Could you state your full name and spell your last name, please.

A Sarah Elizabeth Velling. V as in Victor, E-L-L-I-N-G.

Q You're an officer employed by the Seattle Police Department; correct?

A Yes.

Q When did you first go to work for the police?

A I was hired in September of 2013, I believe.

Q Had you had prior police experience before SPD?

A No.

Q Would you give a business address we could use for you.

A 1519 - 12 Avenue East.

Q Do you recognize the gentleman to my left?

A Yes.
Q Have you seen him before?
A Yes.
Q Do you remember when you saw him before?
A Yes.
Q Roughly when? I think...
A A few months ago.
Q A few months ago. Would October 5th, 2016 sound about right?
A Sure.
Q Have you had contact with Mr. Long only on that occasion or on subsequent occasions?
A Just the one time I believe.
Q Just the one time. Okay. So, you were not -- about a week later his truck was towed. You were not present when the truck was towed; correct?
A No.
Q So, that's "yes;" correct?
A Yes, you are correct.
Q Did anybody ever tell you anything about the towing, come back and talk to you about the towing?
A No.
Q So, tell me if you would, what prompted you to have contact with him on October 5th?
MR. RYAN: Object to the form. Do you

understand the question?

THE WITNESS: Yes.

MR. RYAN: Okay.

A I was dispatched to a call down -- I can't recall exact address -- down kind of by Peter's Place, to go move along some transients and -- who had set up an encampment on private property. I went and spoke to the complainant. I verified that it was, in fact, his property, that he did not want the camp, campers there. So, then along with, with my backing units we went to the tents. We attempted to contact the individuals who had set up the encampment. They were not there. So, I went back to the complainant, and I advised him they were no longer there, call us again if he needed further police assistance. After I had finished talking to the originally complainant another individual walked up to me and said he wanted to report a different individual who had been threatening his employees with a knife approximately one week ago. I immediately told this individual that he should have called 9-1-1 to report the knife assault -- or threat the day that happened so that police could have taken necessary action right away, but he didn't. So, I said, "Okay, we can go talk to the individual." He then pointed towards Mr. Long's truck and said, "That's the guy over there." So, I

said, "Okay, we can go talk to him." So, myself and the backing units --

Q -- Let me stop you there.

A Uh-huh.

Q First of all, you said you were dispatched. Do you know who dispatched you? Was there a particular person by name that you can tell us was the person who dispatched you or not?

A I don't know their name.

Q Do you know an officer Officer Ryan Sund?

A No.

Q Do you have any idea why he would be identified as a call-taker?

A Yes.

Q Why?

A He took the 9-1-1 call from the person who called 9-1-1.

Q This is the first person, the person who said that "there are tents here that we don't want" or something like that?

MR. RYAN: Object to the form.

Q You said "the person." I'm confused because you referred to two different complainants I thought. No?

A I'm not following what you're asking.

Q Sund took the -- a 9-1-1 call?

A (Non-verbal affirmative response.)

with anything.

MR. LOBSENZ: She does.

MR. RYAN: No.

MR. LOBSENZ: You don't get to instruct her not to answer.

MR. RYAN: Just move along, Jim. Get to the point.

MR. LOBSENZ: No, no.

Q Were there people inside the tents?

A No.

Q Then this man identified Steven Long as the man that he was -- had done something with a knife a week earlier; is that right?

A He pointed to Mr. Long's truck.

Q And then you went over to the truck?

A Yes.

Q And then you saw Mr. Long?

A Yes.

Q Was he in the truck?

A I don't recall his exact position.

Q He might have been in, he might have been outside?

A Yes.

Q Then what happened?

A Then we talked to Mr. Long, explained to him that the second complainant had said that Mr. Long had had some

run-ins with his employees; there is --

Q -- Let me stop you for a minute. The second complainant being who?

A The new man that had contacted me wanting to alert me to the fact that Mr. Long had been threatening his employees with a knife earlier.

Q The man who seemed to be connected to Fed-Ex?

A I don't know where this guy worked.

Q You explained to him this second complainant had made a complaint and you said did what next?

A Can you repeat?

Q What did you do next?

A So, I told Mr. Long that the complainant had said that Mr. Long was making threats with a knife to his employees. Then we told... I can't recall exactly what happened. We... We told Mr. Long that he needed to move his vehicle. He said that he had to fix it, he was going to get some parts and get it fixed.

Q Let me stop you for a moment. When you say "we" now, who are you referring to?

A My backing units.

Q Back-up units.

A (Non-verbal affirmative response.)

Q They would be who?

A Officer Dickson and Officer Birk.

have a knife?

A He told me -- I don't recall the conversation, but -- I don't recall the conversation enough.

Q Then how do you know you rendered assistance to the complainant by finding that he didn't have a knife?

A I don't recall my exact thoughts at the time, but at the time I felt I had rendered assistance.

Q Okay.

A And also we asked Mr. Long to move his vehicle within seventy-two hours.

Q So, I had sort of stopped you when you said we told Mr. Long he had to move his vehicle. Did you tell him why?

A I don't recall.

Q Do you recall what you said?

A I don't recall.

Q Besides telling him that "you have to move your vehicle," do you recall any of your other conversation with him?

A He told me -- I recall he said he needed to get parts to fix the vehicle. And you said that's fine, not a big deal.

Q Any other part of the conversation you remember?

A No.

Q So, just be sure here. You remember, One, that you told

him he needed to move his vehicle. You remember that he said he needed to get parts. You remember that you said that's not a big deal. Anything else you remember about your conversation with Mr. Long that day besides those things?

A No.

Q Did you look at his truck?

A Yes.

Q What did you see?

A My main memory was that there was a blue tarp outstretched to the west.

Q Anything else you remember about his truck?

A It was an older truck.

Q Anything else?

A No.

Q Did you ask Mr. Long for an I.D.?

A I don't recall.

Q Normally when you contact somebody out on the street who's suspicious don't you ask for I.D.?

A It depends.

Q Do you remember whether you asked for a driver's license?

A I don't recall.

Q Did you ask him for his address?

A I don't recall.

Q Did you do anything to try to figure out why he was parked in that neighborhood?
A No.
Q Why not?
MR. RYAN: Object to the form.
MR. LOBSENZ: You object to the form of "why not"?
MR. RYAN: It assumes that there is any reason to do it in the first place.
Q Why not?
A I don't recall.
Q Did it appear like he was living in the truck?
A It didn't appear that way. You can't assume anything on the job.
Q Is that your -- Are you finished with the answer?
A Uh-huh.
Q So, I don't understand. You say you can't assume anything?
A (Non-verbal affirmative response.)
Q Did you consider yourself that he might be homeless?
MR. RYAN: Object to the form. I mean, if he's homeless then he doesn't have a home, and if the car's his home, he's not homeless, he's unhoused.
MR. LOBSENZ: You're objecting to the form?
MR. RYAN: You're twisting words.

Q Did you consider whether or not he might be homeless?
A At the time I was more concerned with the potential knife threat. I didn't stop to think about the fact that he could be homeless.
Q So, no, you didn't consider it; right?
MR. RYAN: Object to the form. Asked and answered.
A I don't recall.
Q Did you talk to him about how long he had been parked there?
A I don't recall.
Q Was his truck causing a problem?
MR. RYAN: Object to the form. What do you mean by "problem," Jim? Can you explain?
Q Was his truck causing a problem?
A It was causing a problem for the second complainant.
Q How was the truck causing a problem?
A The truck was causing a problem because it belonged to Mr. Long, and Mr. Long was causing a problem for the complainant's employees.
Q You asked Mr. Long about this allegation that he had done something with a knife a week earlier?
A Yes, that was the reason for the contact.
Q What did he say?
A I believe he said, no, there was no issue.

Q During this time that the three of you were there, you and Dickson and Birk, is one of the three of you in charge or not?
A I was the primary officer, but we all equally work together on the call.
Q So, what does it mean then to say you're the primary officer?
A It means if there's a report then I will be doing the report.
Q You have to do the paperwork?
A Yeah.
Q Does it mean that you make the decisions about what to do?
A It's not my sole decision.
Q But it's your final decision?
A No.
Q It's a collective decision?
A Correct.
Q So, the three of you decided what to do in this case?
A Yes.
Q Do you remember any discussion you had with Dickson about what to do?
A I don't recall.
Q Do you remember any discussion you had with Birk about what to do?

A I don't recall.
Q Were you there to observe any conversation between Henricksen and Long?
MR. RYAN: Object to the form. Assumes facts not in evidence.
MR. LOBSENZ: It doesn't assume anything.
Q Were you able at any time --
MR. RYAN: -- Assumes conversation.
MR. LOBSENZ: Please don't interrupt. You can make your objections when I'm done.
MR. RYAN: You can ask questions, questions that are proper.
Q Were you --
A -- I stood next to Officer Henricksen so that she would not have to have contact with Mr. Long.
Q So, that she would not have to have contact meaning not have to have physical contact?
A Just no contact.
Q So, she, she never did speak to him?
A I can't say for certain.
Q Well, what is the contact that you're preventing by standing next to her?
A Again, the, the original reason that I initiated contact with Mr. Long was because he was possibly armed with a knife and threatening others, so I didn't want the

Parking Enforcement Officer who was unarmed to be alone with this potential suspect.

Q Okay.

A So, I tried to stand next to her while she was putting on the sticker.

Q Okay. And she talked to him?

A I don't know for certain.

Q You don't know. And you don't recall any conversations she had with him; right?

A Not for sure.

Q Well, how about -- partly or you're not sure but --

A -- No.

Q Since this date of October 5th have you had any conversation with anyone about Mr. Long?

A My lawyer.

Q Your lawyer? You're pointing to Mr. Ryan?

A (Non-verbal affirmative response.)

Q What was that conversation about?

MR. RYAN: Object to the form. It calls for privilege.

MR. LOBSENZ: It does -- Privilege?

MR. RYAN: I'm her attorney.

MR. LOBSENZ: You're her attorney?

MR. RYAN: Yes.

MR. LOBSENZ: You're claiming to represent

EXHIBIT C

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

CITY OF SEATTLE, Plaintiff, vs. STEVEN GREGORY LONG, Defendant.	NO. CASE NO. 203641306

DEPOSITION UPON ORAL EXAMINATION OF
OFFICER CHRISTINA HENRICKSEN

TUESDAY, FEBRUARY 28, 2017
701 FIFTH AVENUE, SUITE 3600
SEATTLE, WASHINGTON 98104
DEHUFFDEPO.COM

C O R R E C T I O N S H E E T

Please carefully review the preceding transcript and note any and all corrections to those statements made only by you and not those of others, on this sheet. Return the original Correction Sheet within 30 days for inclusion with the original transcript, to: DEHUFF DEPOSITION REPORTING, LLC, 17314 Southeast 346th Street, Auburn, Washington, 98092.

PAGE LINE SUBSTANCE OF CORRECTION AND REASON THEREFOR:

_____ _____

OFFICER CHRISTINA HENRICKSEN DATE

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8	10/12/16 PARKING INFRACTION	48
9	10/12/16 TOW/IMPOUND AND INVENTORY RECORD	55

BE IT REMEMBERED, that on Tuesday, February 28, 2017, at 2:18 p.m., at 701 Fifth Avenue, Seattle, Washington, the deposition upon oral examination of OFFICER CHRISTINA HENRICKSEN was reported by CARRIE J. DEHUFF, Court Reporter in and for the State of Washington;

WHEREUPON, the following proceedings were had; to-wit:

OFFICER CHRISTINA HENRICKSEN, being first duly sworn by the Court Reporter to tell the truth, testified as follows:

EXAMINATION

BY MR. LOBSENZ:

Q Could you give your full name and spell your last name.

A It's Christina Lee Henricksen. Last name H-E-N-R-I-C-K-S-E-N.

Q Could you give a business address for the court reporter. Any business address that you want. The Office of the Parking Enforcement?

MR. RYAN: You can give him my office.

MR. LOBSENZ: Oh, okay.

A 701 Fifth Avenue, Suite 2050.

Q You're employed as a Parking Enforcement Officer by the City of Seattle; correct?

A Yes.

Q When did you start that job?

A April 8th about two years ago.

Q About two years ago. 2015, April 8th?

A (Non-verbal affirmative response.)

Q And have you had law enforcement employment history

before that?

A No.

Q Do you recognize the gentleman to my left?

A No.

Q You don't remember ever having contact with him before today?

A No.

Q Do you remember going out to a location near Poplar around early October of last year and meeting up with some other officers there?

A Can you be more specific?

Q Do you remember anything about giving a 72-hour parking infraction for a truck that was parked out on Poplar in October of last year?

A Yes.

Q What do you remember?

MR. RYAN: Object to the form. Calls for a narrative. You can answer.

A Could you rephrase the question?

Q What do you remember?

A From the day I cited the vehicle --

Q (Non-verbal affirmative response.)

A -- that we're referring to?

Q Yep.

A From start to finish from the radio call on October 5th,

October 12th?

Q Why don't you start with the first thing you remember about from October 5th.

A October 5th, 2016 I received a radio call to go to the location 951 Poplar Place South. The time, I cannot recall. It's on the citation. And I met with police officers there. And there was mention of the vehicle needing to get tagged, which is the 72-hour, tag a vehicle with a piece of paper in the window informing them they have to leave that position after 72 hours. So, they have 72 hours to move their vehicle. So, I did that and did steps in tagging the vehicle. So, you're putting that paper on the window, chalking tires and noting where the tire valves were on the wheels. Then I left.

Q When you got out there to the location after being dispatched, who was there?

A I cannot recall the officers' names that were there.

Q How many officers were there?

A I cannot recall.

Q If I said to you -- Well, how many of the officers out there were female?

A One, at least one that I can remember.

Q So, you don't have a very good memory of this incident?

A It was October of last year.

Q So, you don't?
A I am going over what I remember.
Q If I said to you the name Sara Velling, Officer Sara Velling, does that trigger any memory?
A No.
Q No. Do you know Officer Velling? Does the name mean anything to you?
A No.
Q No. Okay. If I said to you Officer Dickson, does that mean anything to you?
A No.
Q You have to answer out loud.
A No.
Q If I said Officer -- I can't remember if it's Burt or Birk.

MR. RYAN: Birk.

Q Do you know an Officer Birk on the force?
A I cannot recall. I meet a lot of officers.
Q When you got out there did you talk to the officers?
A Yes.
Q All of them?
A I cannot recall.
Q What can you recall about what the officers said to you?
A I remember speaking with an officer on scene that they mentioned the vehicle owner was going to get a part for

the truck, and that's when the steps came in where I was tagging the vehicle.

Q Anything else that you remember the officers told you?

A No.

Q Is there anyone there besides police officers?

A Pedestrians possibly, people walking by on the street. I cannot recall specifically what people were on scene.

Q How about do you recall encountering anyone who was apparently the owner of the truck?

A No.

Q You don't recall talking to the owner of the truck?

A No.

Q What do you recall about the truck and its appearance?

A It looked like a, just a white truck, just a regular vehicle.

Q It looked like a regular vehicle?

A It looked like a truck.

Q Okay.

A Just a vehicle.

Q Did anyone tell you why the truck was still there, why it was parked there?

A Why the vehicle was parked there?

Q Uh-huh.

A I have no idea why anyone parks there.

Q Did anyone tell you?

A No.
Q You don't recall any conversation about the truck being there because of a mechanical breakdown?
A The only thing I remember is that a police officer mentioned the owner or driver of the vehicle was getting a part for the truck and that they were going to get a part for the truck.
Q Do you remember a female officer standing close to you while you talked to somebody else?
A I don't recall.
Q Do you remember a female officer saying "I'll protect you" in some way?
A I remember the police officers being on, on scene and mentioning certain things that I don't know if I can say.

MR. RYAN: Say, say whatever you remember.

A There was possibly a weapon involved, so the police officers were to be on scene.
Q So, what did they tell you about that?
A No specifics, just that they wanted to be near me when I tagged the vehicle.
Q So, some officer told you there might be a weapon?
A Involved.
Q Involved in...?
A Just -- I don't have any specifics. I just remember

Q Do you remember what the, what the weather was like?
A I don't recall.
Q Do you remember whether it rained --
A -- It looks like there's a shadow in the photo, so sunny possibly.
Q So, when you got out there, at least you got out there around 4:25?
MR. RYAN: Which day?
Q On the 12th, what do you remember doing that day?
A On the 12th?
Q (Non-verbal affirmative response.)
A I remember, I remember driving to the scene and following up on my 72-hour tag which would be seven days later as opposed to just 72 hours. And the vehicle was still there. I parked, I parked down the street, down one block and called for police officers because they told me to call for them for assistance if I were needing to tow the vehicle. So, they came. And then I followed the process for towing the vehicle. The vehicle -- First tow truck came, tried to load it up, and then they requested the second one. And then by then I left. As for the time I left, I do not know.
Q Do you know an officer named Aimee LeClaire?
A I don't know. We might have crossed paths.
Q Do you know an officer named Dorian K-O-R-I-E-O?

A Is the current manager.
Q What is the last name?
MR. RYAN: Can you speak up, Jim?
A I can get all of this information to you.
MR. RYAN: Just answer the questions.
Q And was Peter your supervisor back -- supervisor of Mr. Cornelius in October of last year?
A I cannot remember when he came in. I believe we had an acting manager at that time.
Q Who was that?
A Jason, Jason Kasube.
Q Can you spell Kasube?
A K-A-S-U-B-E.
Q So, we have so far Peter, Jason and Cord, I think are the names you mentioned?
A Yeah.
Q Did any of those people ever give you any instruction as to how to deal with homeless people?
A What do you mean by that, how to deal?
Q I mean do they give you any direction, instruction, suggestion about what to do when you encounter homeless people with their cars, anything?
A We interacted with them the same we do everyone else.
Q So, are you saying, "No, no one ever gave me any special instruction about how to deal with homeless people"?

A Not that I can recall.
Q Did you get any special instruction on how to enforce the 72-hour ordinance from anyone?
A Yeah, we were trained on that.
Q Who trained you?
A Our FTOs, Field Training Officers Vince, we have Vince and... I can't, I can't recall the other person. John.
Q Okay. These training officers, are they training officers for Parking Enforcement or --
A Uh-huh, yes.
Q -- specific.
A Specific, yes.
Q And Vince, do we know his last name or not?
A Vaughn -- Or, no; it's not Vince Vaughn. It's... I, I don't know their last names.
Q Okay. Vince -- I'm sorry, what was the other one?
A John. John Rudd, R-U-D-D.
Q What training did either Vince or John Rudd give you about how to enforce the 72-hour ordinance?
A I cannot recall specifically what they said because it was so long ago when we first started. We're given the ordinances, and they go over the ordinances, and how we cite the vehicles according to that specific ordinance and steps.
Q So, you're given something in writing when you're

trained about this?

A It's a, it's a booklet.

Q Uh-huh.

A That has all the ordinances in it, and I actually provided the ordinance to you, the 72-hour ordinance.

Q So, this booklet has the ordinances plus some other stuff or just the ordinance?

A The ordinances and definitions in there.

Q Do you consider yourself to have discretion when you find a vehicle that is in violation of the 72-hour ordinance to either tag it or not tag it?

A How do you mean "discretion"?

Q Do you think you have the authority to say, "Sometimes I'll tag it, and sometimes I might not tag it"? Do you think you have that power?

A We tag vehicles we've been to calls for, or complaint -- gotten a complaint about from a citizen.

Q Okay. But that's not my question. I'm asking you in your mind when you run across a vehicle that violates the 72-hour ordinance, do you think you have the power to say "I'm not going to tag this one?"

MR. RYAN: Objection. It is asked and answered. But you can answer it.

A If I see a vehicle in violation, then I'm going to cite the vehicle for that particular infraction, period.

Q Period, every time?
A Yes.
Q Okay. Now, did somebody instruct you at some point that you are required every single time to issue that parking infraction that you...?
A We are trained to cite vehicles that are in violation.
Q Right. But did somebody instruct you that you don't have any discretion to decide not to cite it?
MR. RYAN: Asked and answered.
A I answered already.
Q No, I don't think you've answered it yet. So, I'm asking -- First I asked you what you thought. Now I'm asking you whether anybody instructed you that it's mandatory that you don't have any discretion.
A I cannot recall conversations.
Q Okay. So, you don't know. So, where do you think you got this idea that you don't have discretion?
A I never said that.
Q You said "I do it every single time;" right?
A I said I cite vehicles that are in violation of the ordinance.
Q But you testified that you always cite them just a minute ago; right?
A I cite vehicles that are in violation, yes.
Q Yes, always. So now I'm asking you, do you have any

MR. RYAN: Object to the form. Calls for speculation. Assumes facts not in evidence.

Q Are you saying they said do it every time?

A I don't, I don't know what they said.

Q Okay.

A That's making assumptions.

Q So, you don't know why you do it every time?

A I enforced what they trained me to do in the scenarios -- not scenarios -- in the violations. They train us, the steps and the process to take from citing, to towing, all the ordinances.

Q Do any of these training officers ever say, "You don't have to give a citation every time"?

A I cannot recall our conversations.

Q Have you ever seen a vehicle that was in violation of a 72-hour ordinance and made the decision "I'm not going to tag it"?

A Not that I'm aware of it.

Q So, you personally have done it every time?

A Personally, yes. As far as I can remember.

Q Are you familiar with the existence of some safe lots where homeless people can park their cars?

A I have heard of them, what's on the news and whatnot.

Q Do you get any training from anyone in the City of Seattle about these safe lots?

MR. RYAN: Object to the form. It's vague as to "homeless."

Q Do you understand the question?

A I don't know if they're homeless. I don't ask them.

Q They never tell you?

A I cannot recall a conversation where they specifically say, "I'm homeless; this is my vehicle."

Q Can you recall a situation where you knew somebody was homeless and had a vehicle and was violating the 72-hour rule?

A I cannot recall this scenario.

Q Never, never?

A That I can recall. I can't recall.

Q Okay.

MR. RYAN: Want to take a break?

MR. LOBSENZ: I'm pretty close to taking my break to talk to them, so just hang in there for a bit.

MR. RYAN: Sure.

(Exhibit Number 8 marked.)

Q You're looking at Number 8 right now; right?

A Yes.

Q Do you recognize that as the parking citation you issued?

A Yes.

Q That's your signature at the bottom?

perjury under the laws of the State of Washington that the forementioned is true and correct," and then it has another statute citation. Do you see that?

A The RCW?

Q Yeah.

A Yes.

Q Okay. Then it has your signature; right?

A Underneath, yes.

Q So, what were you certifying under penalty of perjury was true?

MR. RYAN: Object to the form. Calls for a legal conclusion. This is absurd. If you know.

A I don't know.

MR. LOBSENZ: Okay. I don't have any further questions.

MR. RYAN: I've got a couple quick questions.

EXAMINATION

BY MR. RYAN:

Q So, let me just -- The record was a little unclear on a lot, but I'll try to clear some of it up. So, did you ever have a conversation with Mr. Long?

A Not that I can recall.

Q Did anyone ever tell you that that was Mr. Long's home or that he was living in the vehicle?

A No, not that I can recall.

Q And when we were talking before about issuing the citations, the 72-hour citations -- I want to focus on just the 72-hour citations; okay?
A (Non-verbal affirmative response.)
Q Is that a "yes"?
A Yes.
Q All right. So, can you drive around the City looking to find vehicles that appear to have been there for 72 hours or longer so that you can ticket them or, or put these 72-hour tickets on them?
A No.
Q Then how is it that you came to -- when you do issue 72-hour tickets or citations, how is it that you normally come upon a vehicle that has been there that long? How do you know it's been there that long?
A It's upon complaint or radio call.
Q And when you say complaint, where would that complaint come from?
A A citizen can do it online, do a complaint online and send it -- Basically it goes through a process and then it's sent to our department, and then we follow up as an officer on tagging the vehicle and whatnot, and that's where the complaint comes from.
Q And when you say radio call, what do you mean by radio call?

A So, radio call, Dispatch will call us to a location and the infraction and vehicle description, and... And then we go from there. That's what the radio call is.
Q And normally in Seattle it's -- your -- Once you get the ticket, you have 72 hours -- once you get the notice you have 72 hours to move it; correct?
A From, from the tag, yes, you have 72 hours from that moment.
Q Did you put a tag on Mr. Long's vehicle?
A Yes.
Q And was that tag there when you came back?
A No.
Q So, Mr. Long ripped it off, do you know one way or the other?
A Someone that I do not know took it off the vehicle.
Q And you didn't -- You came back. You gave Mr. Long four additional days to move the vehicle; correct?
A Correct.
Q Why did do you that? Why did (SIC) you come back at the 72nd hour and ask him to move his vehicle?
A I just wanted -- It was a courtesy I gave a little extra time. Maybe the part needed to be ordered and taken and within a few days. I just gave it out there.
Q So, you were just trying to cut him a break?
A Yeah.

MR. RYAN: I have no further questions.

MR. LOBSENZ: Can you read back the question? There was something like "after you gave him extra days why did you come back"?

(Reporter read the question.)

(Comments off the record.)

MR. RYAN: What I meant to say was "why didn't you come back" --

MR. LOBSENZ: Yeah.

MR. RYAN: -- "at the 72nd hour and tow the vehicle or move -- and tell him to leave."

MR. LOBSENZ: Yeah, you said didn't?

MR. RYAN: Right. Didn't.

MR. LOBSENZ: You said "did." That's not what it says here. Here it says "did."

MR. RYAN: What I meant to say was that. So...

MR. LOBSENZ: Okay, so I'm just trying to be sure here.

EXAMINATION

BY MR. LOBSENZ:

Q You didn't come back between October 5 and October 12th; did you?

A Not that I can recall.

Q You just went past the 72 hours without coming back for

EXHIBIT D

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

CITY OF SEATTLE, Plaintiff(s),	
vs.	203641306
STEVEN GREGORY LONG, Defendant(s).	

DEPOSITION UPON ORAL EXAMINATION OF
OFFICER WALKER DICKSON

12:55 P.M.

MARCH 1, 2017

101 YESLER WAY, SUITE 300

SEATTLE, WASHINGTON

REPORTED BY: MARY L. GREEN, CCR 2981

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ALSO PRESENT: STEVEN LONG

I N D E X

EXAMINATION BY: PAGE(S)

MR. RUDENSKY 4

EXHIBITS FOR IDENTIFICATION PAGE

NO EXHIBITS MARKED

SEATTLE, WASHINGTON; WEDNESDAY, MARCH 1, 2017

12:55 P.M.

--oOo--

OFFICER WALKER DICKSON,

sworn as a witness by the Certified Court Reporter,

testified as follows:

EXAMINATION

BY MR. RUDENSKY:

Q. Could you please state your name for the record.

A. Walker Dickson, spelled W-a-l-k-e-r D-i-c-k-s-o-n.

Q. And, Officer Dickson, have you ever given a deposition before?

A. No, I have not.

Q. So you understand that you're under oath?

A. Yes.

Q. And what I would request is if at any time you don't understand one of my questions, just please indicate so I can rephrase it and clear up any confusion. If you don't say anything, I'm going to assume that you understand what I'm saying. Is that okay?

located?

A. I believe you stated it was under I-5.

Q. Are you aware of the specific part of I-5 that it was located under?

A. No.

Q. Are there any Seattle Police Department formal or informal policies that address vehicle residency?

MR. RYAN: I just want to object to the form to the extent that this is his knowledge. He's not being proffered as a 30(b)(6) or anything like that.

MR. RUDENSKY: That is our --

MR. RYAN: Just with that preface.

MR. RUDENSKY: Sure.

MR. RYAN: You can answer.

A. Could you state the question again?

Q. (BY MR. RUDENSKY) Are there any formal or informal Seattle Police Department policies that pertain to vehicle residents?

A. Not that I can recall at this time.

Q. Have you ever responded to situations that have involved people living in their vehicles?

A. I've not responded to any call of a person stating to me that they are living out of their vehicle.

A. I believe the address is like 901 South Charles Street.

Q. I want to take you back to October 5, 2016. Were you dispatched to roughly the intersection of Norman and Poplar on October 5, 2016?

A. Yes.

Q. And did that come through dispatch or another officer requesting assistance?

A. Dispatch.

Q. And what did dispatch say to you?

A. I don't recall the the exact words they said, but I know I was dispatched as a backing officer.

Q. And was this location within your normal patrol area?

A. It's within the area that I was patrolling that day but not my specific district.

Q. Is there a particular reason that you responded to this call?

A. Because it was sent to me.

Q. And it was sent to you specifically?

A. Along with several other officers, yes.

Q. And could you walk me through what you did when you first arrived on scene at Norman and Poplar on October 5, 2016?

A. Parked a reasonable distance away from the

location, waited until all the officers arrived. Then the primary officer contacted the complainant to make sure that it was their property; that they were wanting to speak to some people that were apparently on it.

Q. And who was the original complainant?

A. I didn't contact them.

Q. You never had any conversations?

A. With the original complainant, no.

Q. Did you speak to any of your fellow officers about the complainant?

A. Yes, I did.

Q. And what did these officers say about the complainant?

A. Stated that they were the owner of the property and would like some people that were staying on the property to be moved along.

Q. What kind of property was it?

A. I believe it was a storage area.

Q. Did it have a building or was it just an open lot? Could you be a little bit more specific?

A. There was a building with what appeared to be a loading dock.

Q. And could you expand on what you mean by people were staying there?

A. The complainant said they'd noticed several

Q. So in other words, it depends on the type of call --

A. Yes.

Q. -- the outcome of that?

Who was the primary officer in charge?

A. Officer Velling.

Q. And as a backup officer, what is your role in that type of situation?

A. To be aware of what's going on on the scene, make sure that I'm safe, the primary officer is safe. We apply a system called contact cover, so the primary officer is usually the contact. They're the ones speaking to anyone that we would come across where I'm making sure that that person they're dealing with doesn't do anything that could potentially harm themselves, harm officers, harm anyone around them, and make sure that anyone that's coming into the area isn't going to cause us any concerns.

Q. Do you provide any of your observations or advice or feedback to the primary officer?

A. If they ask for it, yes.

Q. In this instance, did Officer Velling ask for your impression of the situation?

A. Once we'd contacted -- or I apologize. Once she contacted the complainant, spoke to us, we went

over to that location, and we didn't locate anyone there. She came to the conclusion that there was no one there. We can't speak to anybody.

Q. And was that the end of your interactions at Norman and Poplar on October 5, 2016?

A. No.

Q. So what else occurred there?

A. Officer Velling went back to speak to the complainant to inform them there was no one there, and at that time, I'm not sure if it was the same complainant or someone else that came up to her and informed her that there was an incident that had occurred sometime prior in the area regarding some parked vehicles.

Q. And what was the specific nature of this incident?

A. I don't remember the exact details. I think there was a possible threat involved with a knife regarding I think it was somebody cleaning up the area. I'm not sure.

Q. And the second complaint, did Officer Velling investigate the second complaint?

A. Yes. She asked Officer Burke and I to assist her in trying to contact possibly one of the parties.

Q. And how did Officer Velling identify one of

these parties?
A. I believe she was told by the complainant that it involved a party that was in the location.
Q. And did you -- were you a part of that conversation or was this something that Officer Velling informed you of?
A. It was something Officer Velling informed me of.
Q. And what did she say specifically?
A. I don't recall at this time.
Q. Did she indicate what she intended to do to respond to this incident?
A. She wanted to go contact the party and get their side of the story.
Q. And did she do that?
A. Yes.
Q. Were you present during that?
A. Yes.
Q. And could you overhear the conversation?
A. Yes.
Q. And could you tell me what was said during that conversation?
A. I don't recall at this time.
Q. Did you ever speak to the individual that Officer Velling contacted?

involve separating the parties if there are two parties there.

Q. Do you recognize Mr. Steven Long, who is sitting to my left?

A. Yes.

Q. And where do you recognize Mr. Long from?

A. From the call that we're talking about.

Q. Was Mr. Long the individual that you approached about these allegations that the second complainant made?

A. Yes.

Q. What caused you to discuss parking regulations with Mr. Long?

A. It appeared that their vehicle had been staying there longer than 72 hours. There appeared to be grass and debris under the vehicle.

Q. Did you observe anything else about the vehicle?

A. I noticed a tarp set up next to the vehicle.

Q. What else did you observe about the vehicle?

MR. RYAN: Asked and answered.

Q. (BY MR. RUDENSKY) How did you know that the vehicle belonged to Mr. Long?

A. I didn't know.

Q. If you did not know that the vehicle belonged

to Mr. Long, could you explain why you had a conversation with him about the 72-hour parking ordinance?

A. I always let people know in situations involving a parking area that it could be taken as I can stay here longer than the 72 hours what the city ordinance is.

Q. So I'm trying to just keep this straight. In response to a complaint about a threat, you approached Mr. Long, who was identified as an individual involved, and not knowing that the vehicle that was parked belonged to him, you informed him of the 72-hour parking ordinance?

A. After he had spoken with Officer Velling about I believe it was his friend's involvement in the situation before and having seen him come from the tarp area next to the vehicle, I indicated to him, Are you aware of this?

Q. Did he tell you why he was under the tarp by the vehicle?

A. No.

Q. Did he inform you why the vehicle was parked in this location?

A. No.

Q. Did you see Mr. Long go to Peter's Place at

any point that day?

A. I do not recall at this time.

Q. So this conversation happens. Did you believe that there was probable cause to do anything given the situation?

MR. RYAN: Object to the form; vague as to anything.

Q. (BY MR. RUDENSKY) Let me rephrase. Do you believe -- did you have probable cause to believe that a crime had been committed?

A. What type of crime are you referring to, sir?

Q. Just answer my question, please.

MR. RYAN: I think he's asking you to rephrase it.

Q. (BY MR. RUDENSKY) As a police officer whose role is to enforce the laws of the City of Seattle and the State of Washington, did you have probable cause to believe that Mr. Long was violating any of those laws?

MR. RYAN: Object to the form.

Q. (BY MR. RUDENSKY) Please answer.

A. Mr. Long specifically?

Q. Yes.

A. No.

Q. And so what happened next after this conversation?

A. I don't recall exactly what happened next. I know Officer Velling, Officer Burke, and I decided that it would be a good idea to contact the parking enforcement officer to come tag the vehicle for 72 hours.

Q. Why did you think that was a good idea?

A. As I indicated earlier, there was a lot of debris and grass growing under the vehicle. It was parked on public property, which would indicate that the vehicle had been there a significant amount of time.

Q. Is that generally a thing that you look for while you patrol or respond to calls, vehicles that appear to have been parked for longer than 72 hours?

A. It's part of my job description, yes. I'm sorry. Job duties. Sorry.

Q. How many times -- and an estimate is just fine, rough estimate -- in the last year would you say you have issued or been part of a response team that has issued a 72-hour parking notice?

A. Probably about ten times, somewhere around there.

Q. Did you or any of the responding officers issue the 72-hour notice?

A. No.

Q. Who issued the 72-hour notice?
A. A parking enforcement officer came.
Q. How did the parking enforcement officer get called to the scene?
A. We asked for one to come to our location.
Q. Is that the typical process for 72-hour parking violations?
A. Yes and no.
Q. Could you explain that, please?
A. We can do the 72-hour stickers ourselves as a patrol officer, though we might not be able to respond after that 72 hours to come take care of the vehicle, where parking enforcement we can call for them, have them show up. They can then respond. More likely than not they will be able to come back after that 72 hours and take care of the citation if need be or if the vehicle is already moved.
Q. After or during your conversations with Mr. Long, did you or any of the other responding officers talk to the second complainant who had pointed out Mr. Long as allegedly being involved in some sort of confrontation?
A. I personally did not.
Q. Did you observe any of the other responding officers?

Q. Did you observe the rest of this public right-of-way?
A. I observed it, yes.
Q. Did you observe any other vehicles there?
A. Yes.
Q. Did you observe any RVs there?
A. I do not recall at this time.
Q. Did you observe any tarps or tents around there?
A. Other than the one I spoke about earlier?
Q. In general.
A. In general?
Q. Uh-huh.
MR. RYAN: Object to the form as vague.
A. I do not recall at this time.
Q. (BY MR. RUDENSKY) Did you ever walk around the vehicle?
A. No, I did not.
Q. Did you ever look into the truck, the vehicle?
A. No, I did not.
Q. What was the reason that three officers remained on the scene waiting for parking enforcement to show up?
A. The complainant had indicated to Officer Velling that I believe it was a knife was involved or

threatened, so being that parking enforcement is unarmed and they have no way of protecting themselves, we wanted to make sure that the situation was resolved without any issue or any potential harm to parking enforcement officer.

Q. So was there a connection between the parking enforcement officer's response and the fact that there was a complaint involving a knife?

A. The complainant indicated that the subject was around that vehicle, and when we spoke with Mr. Long, I believe he indicated it was not him but a friend, so a way for officers to make a situation resolved, we like to separate the parties. Being that this vehicle was associated with a knife threat, removing the vehicle from that area would separate the parties as best as possible we could come up with at that time.

Q. Was it your opinion that without a 72-hour notice the vehicle would have remained there?

A. Potentially.

Q. And so the 72-hour notice was an attempt to do what?

A. Well, get the vehicle to leave the block like it's supposed to after 72 hours.

Q. Does the 72-hour notice require the owner of the vehicle to move the vehicle very far?

A. It doesn't require the owner. It requires anyone to move the vehicle.

Q. How far does the vehicle need to be moved for there not to be -- let me put it this way -- to restart the clock?

MR. RYAN: Object to the form. To the extent you know -- it might call for a legal conclusion, but you can answer if you know.

A. Into the next hundred block basically.

Q. (BY MR. RUDENSKY) Did you speak to Mr. Long about the complainant's allegations?

A. I specifically?

Q. Yes.

A. At this time, I do not recall.

Q. You mentioned at the beginning of this deposition that you reviewed the dashboard camera --

A. Uh-huh.

Q. -- regarding this incident.

A. Yes.

MR. RYAN: It misstates testimony.

Q. (BY MR. RUDENSKY) Could you in that video observe the conversation with Mr. Long?

A. Observe it, no.

Q. So the video -- it was off camera in other words?

EXHIBIT E

IN THE MUNICIPAL COURT FOR THE CITY OF SEATTLE

KING COUNTY, STATE OF WASHINGTON

CITY OF SEATTLE, Plaintiff, vs. STEVEN GREGORY LONG, Defendant.	203641306

DEPOSITION UPON ORAL EXAMINATION OF

OFFICER NICHOLAS BURK

1:00 P.M.

MARCH 8, 2017

101 YESLER WAY

SEATTLE, WASHINGTON

REPORTED BY: LORI A. PORTER - RPR, CCR 2533

A P P E A R A N C E S

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ALSO PRESENT: STEVEN GREGORY LONG

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SEATTLE, WASHINGTON; MARCH 8, 2017

1:00 P.M.

--oOo--

OFFICER NICHOLAS BURK,

sworn as a witness by the Certified Court Reporter,

testified as follows:

EXAMINATION

BY MS. LOGERFO:

Q. Good afternoon. I'm Ann LoGerfo from Columbia Legal Services.

Can you state and spell your name for the record.

A. Sure. Officer Nicholas Burk, N-i-c-h-o-l-a-s B-u-r-k.

Q. And what is your business address?

A. 1519 12th Avenue, Seattle.

Q. Is that the East Precinct?

A. Yes.

Q. Have you ever given a deposition before?

A. No.

Q. Do you understand you're under oath?

A. Yes.

Q. So the court reporter needs to take down

be abandoned. There were no people there. Did you go back and talk to the complainant?

A. Officer Velling did.

Q. And what did she tell the complainant?

A. I don't know. I wasn't there.

Q. Were you still by the abandoned property?

A. Yes. Our vehicles were close to that abandoned property. So we stayed over there.

Q. Okay. Then what happened?

A. Officer Velling came back and told us of another complaint.

Q. And what was that complaint?

A. That was a complaint of a gentleman in a truck parked off of Poplar who allegedly assaulted or threatened somebody, one of their employees or two of their employees, with a knife the day before. That was the claim.

Q. So they claimed the event occurred one day before?

A. If I remember correctly, they said it was the day before that the threat took place.

Q. And did you attempt to talk to the employees who had been threatened?

A. I didn't.

Q. Did any of the officers?

A. I don't remember.
Q. Did Officer Velling relay anything else about the complaint?
A. Not that I can recall.
Q. So then what did you do next?
A. As a group, we went to go make contact with the person in that truck.
Q. And how did you know who the person was?
A. We obtained a description from the complainant.
Q. What was the description?
A. It was very limited. All I can remember is that he was described as a white male.
Q. Was the truck described?
A. They pointed the truck out.
Q. And what did the truck look like?
A. It was a white pickup truck.
Q. Do you remember anything else about the truck?
A. Yes.
Q. What else do you remember?
A. It had lots of property in it.
Q. What kind of property do you remember?
A. I don't remember what was in there. I didn't pay close attention to what was actually in the truck.
Q. Was there any property on the truck?

EXAMINATION

BY MR. RYAN:

Q. Officer Burk, you testified earlier that to the extent that you could, you recalled everything you could about Mr. Long. Let me just ask you: When you first saw Mr. Long, do you know whether or not he had a knife on his person?

A. Yes.

Q. Did he have a knife on his person?

A. Yes.

Q. Where was that knife located?

A. I believe it was in his pocket.

Q. Was anything done with respect to the knife?

A. We checked to make sure it wasn't an illegal knife. We determined it was not; so we left it with him, if I recall correctly.

Q. And you were shown what was marked as Exhibit 2, which is a form that you went over with Counsel. Have you ever filled out one of these forms related to a 72-hour tow?

A. No.

Q. Have you filled out any of these forms in relation to a traffic accident?

A. Yes.

Q. What about a vehicle seizure that's associated

EXHIBIT F

IN THE MUNICIPAL COURT FOR THE CITY OF SEATTLE,

KING COUNTY, STATE OF WASHINGTON

CITY OF SEATTLE Plaintiff vs. STEVEN GREGORY LONG, Defendant.	Citation No. 70836690 Case No. 203641306

HEARING

The Honorable David E. Gregerson Presiding

November 2, 2016

Transcribed by: Jennifer A.P. Albino, CET-661
Reed Jackson Watkins
Court-Certified Transcription
206.624.3005

Electronically signed by Jennifer A. P. Albino (601-130-579-3655) 7abb71a3-b5d9-4100-ba7f-0a56343de59c

A P P E A R A N C E S

On Behalf of Plaintiff:

No one appearing on behalf of the plaintiff

On Behalf of Defendant:

STEVEN GREGORY LONG

Pro se

1265 South Main Street

Suit 105

Seattle, Washington 98144

E X A M I N A T I O N I N D E X

WITNESS PAGE

STEVEN LONG

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-000-

November 2, 2016

THE COURT: Okay. Sir, in the back, what's you're name?

MR. LONG: Steven Long.

THE COURT: Okay. Mr. Long come forward. Have a seat at that table right there.

MR. LONG: Thank you.

THE CLERK: Thanks.

THE COURT: Mr. Long, that's L-o-n-g?

MR. LONG: Yes.

THE COURT: Okay. And are you still on South Main Street, mailing address?

MR. LONG: That's just a mailing address, yes.

THE COURT: Okay. That's fine. That's all I need to know, if it's --

MR. LONG: Uh-huh.

THE COURT: -- good. That's what we want.

MR. LONG: Uh-huh.

THE COURT: Okay. You're here on a parking ticket today.

MR. LONG: Uh-huh.

THE COURT: What time did you get here, sir?

MR. LONG: I'm sorry. I was here at 11:30.

THE COURT: Okay. Why so late?

MR. LONG: The buses weren't on schedule for some reason.

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THE COURT: Okay. Yeah, you've got to count on them being not on time.

MR. LONG: Yes.

THE COURT: Yeah. Because you're lucky we didn't finish because this door would have been locked.

And you're challenging your ticket, Mr. Long?

MR. LONG: Yes. I --

THE COURT: Okay. Do you have any preliminary motions at this time?

MR. LONG: Um, just that it was my home, and they've taken it from me.

THE COURT: Okay. Well, that wouldn't be a preliminary motion. That's probably why you're here. But a preliminary motion is a legal procedure issue you have about the ticket itself. It's not --

MR. LONG: Oh, the --

THE COURT: -- what happened. But is there some legal defect or procedural defect in the actual ticket from the time you received it until the time you're here today?

MR. LONG: Only that I didn't understand. It's sitting 20 feet off the roadway. And it's a gravel lot.

THE COURT: Okay. Well, that wouldn't be a preliminary motion.

MR. LONG: Oh.

THE COURT: I'll tell you what, if you have one coming

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up -- it sounds like it, we'll stop and talk about it.

MR. LONG: Okay.

THE COURT: All right. You're here without an officer so the Court's going to hear the -- I'm sorry is going to read the ticket into the record. Give me a moment to get it.

MR. LONG: Uh-huh.

THE COURT: According to the officer, this is from October 12th, 4:13 in the afternoon. Yeah, 4:13 in the afternoon on Poplar Place South about the 951 address. It's for a -- is it a pickup truck?

MR. LONG: Yes.

THE COURT: Okay. It's a C48853B Washington plates. It's cited under 11.72.440 for 72 hours -- parked over 72 hours.

Officer comments, "Impound vehicle parked over 72 hours. Picture taken. Chalked and tagged on November 5th [sic] at 4:08. Upon return, stems unchanged, tag gone. Upon return, the chalk was gone."

They didn't mark with it -- well, they did chalk -- mark it with chalk. But they also marked it a different way too.

So let me take a look at the picture. Okay. It had some tarps over it.

MR. LONG: Uh-huh.

THE COURT: Okay.

Okay. Let me get something else here.

Okay, sir. I just read the ticket into the record. That

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would be the City's case. And do you have testimony?

MR. LONG: Um, towards the truck, yes, I have.

THE COURT: Okay. You do have testimony. But before I get to testimony, do you have any exhibits you're presenting to the Court?

MR. LONG: Only the picture that you may have saw with the tarps.

THE COURT: Oh, well, if I have them already, that would be the City's. You saw those from the City?

MR. LONG: Yes.

THE COURT: Okay. Do you have copies of those?

MR. LONG: Yes.

THE COURT: Okay. And you got discovery, then, from the City?

MR. LONG: Um, not all of it that I --

THE COURT: What do you mean, "not all of it"?

MR. LONG: -- wanted. There were three officers that presented the 72-hour notice. They said that there was a problem there, and I had to relocate.

THE COURT: There was only one officer who issued the ticket. So that's all we have is from the one officer.

MR. LONG: Yes, I understand that.

THE COURT: Okay.

MR. LONG: But there were three other officer prior to that. They're the ones that called the ticket.

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THE COURT: So you saw the three pictures from the City?

MR. LONG: Yes.

THE COURT: Okay. All right. I'll print those out anyway.

MR. LONG: And the testimony I'd like to just mention is on the --

THE COURT: Oh, not yet.

MR. LONG: Oh, pardon me.

THE CLERK: I can always just pull them on a screen for him too, if he wants.

THE COURT: He has them he said.

MR. LONG: Uh-huh.

THE COURT: You have those pictures?

MR. LONG: Yes.

THE COURT: Yeah.

MR. LONG: Yes, I have.

THE COURT: Okay. If you have testimony, sir, come on up here.

MR. LONG: Thank you.

THE COURT: Raise your right hand.

Do you swear or affirm the testimony you're giving is the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

THE COURT: Thank you. Have a seat there.

And for the record, if you could please state your name

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and then spell your last name.

THE WITNESS: Steven Gregory Long.

THE COURT: Okay. Thank you, Mr. --

THE WITNESS: L-o --

THE COURT: -- Mr. Long.

STEVEN LONG: Witness herein, having first been duly sworn on oath, was examined and testified as follows:

EXAMINATION

BY THE COURT:

Q. And you said you have some exhibits, or are you going to use the City's ones? I have -- are these the same? Let me check with you.

A. Same.

Q. Are these the same ones?

A. Yes, indeed.

Q. Okay.

A. Mine --

Q. I'm going to hand these to you because they're marked.

A. Okay.

THE CLERK: Oh, I never --

THE COURT: Oh, they're not marked.

THE CLERK: -- marked them since they --

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THE COURT: They will be marked.

THE CLERK: -- we're (inaudible).

THE COURT: Yeah. Can you mark them, please?

THE CLERK: Sure.

Q. (By the Court) They are going to be marked so you can use those and refer to the number on them.

THE COURT: Okay. Thank you.

Q. (By the Court) Here you go, sir. You may begin your testimony.

A. Thank you.

Q. Uh-huh. Go ahead.

A. Oh, this Exhibit No. 1 would be, um, like 20 feet away from the main road. It's in a gravel lot.

And my -- Exhibit 3 was -- happened to be where I had to live for the last -- not here particularly, but in my vehicle I had to live there for the last two years. I have no steady income; it's part-time income. I work at the Century Link Field. I only average, maybe, two days a week of work, if I'm lucky -- if they have events going on there.

And what I'm concerned with is the tow fee that they have charged and balanced on my truck. And it's caused me a burden. The truck wasn't totally in operational mode. It had a bad rear end. The gears broke out on me in July on my way to the dentist's office. And I was able to leave it for three weeks over at Good Will. And then I needed to move

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it. And I found this safe location where I stayed for three months and was well-protected and guarded and it was quite all right.

And then I was approached by three officers on the 1st of October -- or the 3rd -- or the 5th of October and was told that they needed to have Parking come out and put a 72-hour notice on my vehicle.

Q. Okay. Any other testimony?

A. Other than the three officers that were apologetic that I had to move. But I was unable to exactly move it.

Q. Okay. Then you may step back to the table.

And may I have those exhibits, please?

A. Sure.

Q. Thank you.

Is your car out of the impound now?

A. No.

Q. It's still in impound, okay.

A. It's still there.

Q. Uh-huh.

THE COURT: And any closing statements you want to make at this time?

MR. LONG: Other than it has -- all my livelihood is right there in that truck, all my work tools --

THE COURT: Okay.

MR. LONG: -- everything I do.

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THE COURT: All right. Thank you.

Okay. Mr. Long, I don't know if you happened to take a look at the ordinances for all this. Have you -- were you able to do that?

MR. LONG: Um, not totally. I've heard about the 72-hour notice, but --

THE COURT: Okay. Yeah. Under the 72-hour notice, one of the sections there says that a person can't park a vehicle on any street or other municipal property for a period longer than 72 hours. So if you park off the street, it doesn't necessarily mean you're not off [sic] municipal property because municipal property, public property, is anything that goes up to the private property line. So if you're on the other side of the property line, if there's a line there, if you're on the public portion of it, you're on municipal property. If you're on the other side of it, private property, then the City can't do anything to enforce because that's not their property.

But with the pictures I'm looking at, there's a fence there --

MR. LONG: Uh-huh.

THE COURT: -- you know, and that public property may go up to the fence.

MR. LONG: It may go past the fence, I believe.

THE COURT: It could be. But if you're on municipal

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property, it doesn't make any difference, then the municipal code applies to any vehicles on municipal property. It doesn't say it has to be on the street.

But what it does say as well, it says: No person shall park a vehicle on any street or other municipal property. Okay? So if you park on that, you could be in violation.

MR. LONG: Uh-huh.

THE COURT: Now, when they came to you on the 5th, they told you that they were going to put a 72-hour notice on it.

MR. LONG: Because they had a complaint; they were called --

THE COURT: Oh, no --

MR. LONG: -- out on it.

THE COURT: -- I understand.

MR. LONG: Yes.

THE COURT: They told you that, though. But the car was -- let me see when this vehicle was --

MR. LONG: Towed on the 12th.

THE COURT: -- on the 12th. But you didn't move it by then because it wasn't operable?

MR. LONG: Yeah.

THE COURT: Okay.

MR. LONG: A little bit.

THE COURT: So it's in tow right now?

MR. LONG: Yeah.

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THE COURT: If you get it out, where's it going to go?

MR. LONG: Um, I have two other places to go put it on, two friend's properties I have --

THE COURT: Okay.

MR. LONG: -- to locate.

THE COURT: And -- yeah. They might have been a good idea in the first place.

MR. LONG: And it's way up north --

THE COURT: Oh.

MR. LONG: -- and my work is south.

THE COURT: Okay. Well, the only thing I can tell you, if you come to this hearing here like this and you're challenging the ticket and challenging the tow, you have to show grounds here that the vehicle is not parked on municipal property or it's parked legally somehow.

The 72-hour rule says this, that if somebody comes out and marks a vehicle or gives you notice, they give you another 72 hours to move the vehicle. They came out on the 5th, okay? And the car was marked. They tagged it.

MR. LONG: Uh-huh.

THE COURT: And when they came back, the tag was still gone -- was gone. You must have taken the tag off, okay.

MR. LONG: Yeah. I peeled it off.

THE COURT: Okay. But it wasn't moved.

MR. LONG: I know.

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THE COURT: And if it wasn't moved, then if you're challenging the ticket, you're telling the Court that it was. It was not 72-hours parked there.

MR. LONG: Uh-huh.

THE COURT: So all I can see here is that the vehicle has been parked there for 72 hours.

MR. LONG: Uh-huh.

THE COURT: Now, the bottom line on this thing is that the City has a preponderance of the evidence on this matter. I understand you got towed. I understand the towing bill is probably sizable, you know. And the only thing I can do here on this is if you want to get your vehicle back, you would have to set up a payment plan with the court. And the Court's willing to entertain that with you.

MR. LONG: For the --

THE COURT: But I can't dismiss anything here because there's nothing -- there's no grounds to dismiss.

MR. LONG: Uh-huh. And --

THE COURT: So the ticket would be valid. I find the ticket valid by a preponderance of the evidence. However, the part I can have control over here is the fine on the ticket. I'd be willing to waive that so you don't have to pay any additional amounts.

But as far as the towing goes, you would have to set up a payment plan downstairs --

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MR. LONG: Uh-huh.

THE COURT: -- with the court. And you would have to show proof of that payment plan back up here. And then you can take this paperwork to the towing yard --

MR. LONG: Uh-huh.

THE COURT: -- and they will release your vehicle.

MR. LONG: But the thing that I have the issue with -- I probably should have testified with that -- was the surrounding area had told me that it was okay to park there. There was a construction company. There were three different construction companies that had things stored on that lot.

THE COURT: Okay. Well --

MR. LONG: And in the --

THE COURT: -- even if they told you that --

MR. LONG: -- (inaudible) --

THE COURT: -- the fact of the matter is --

MR. LONG: Yeah, I didn't --

THE COURT: -- you have to get it from the -- so to speak -- horse's mouth --

MR. LONG: Oh, yes.

THE COURT: -- whoever owns the property.

MR. LONG: Yeah. I didn't know who owned --

THE COURT: That --

MR. LONG: -- it.

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THE COURT: They don't have any authorization there if it's City property.

MR. LONG: I didn't know if it was --

THE COURT: Yeah. Unless they --

MR. LONG: -- City --

THE COURT: -- got a permit.

MR. LONG: I hadn't known if --

THE COURT: Yeah.

MR. LONG: -- it was City or not.

THE COURT: Yeah. See, that's the problem.

MR. LONG: Oh.

THE COURT: You have to find out for sure, absolutely, what kind of property you're on.

MR. LONG: Uh-huh.

THE COURT: But this Court is willing to allow you to go downstairs and get a time pay, if you want to do that. Set it up so you can get your vehicle out.

Now, can you afford any down payment?

MR. LONG: No. I have $50 to my name --

THE COURT: Okay.

MR. LONG: -- right now.

THE COURT: All right.

Mr. Clerk.

THE CLERK: Sir?

THE COURT: Let's go ahead and waive his down payment.

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I'm going to waive your down payment. You go downstairs, talk to them, and set this up, all right? You set this up. They'll give you paperwork. You need to bring it back to the Court.

Oh, he can't do it right now, can he?

THE CLERK: Well, I don't even have that impound paperwork.

THE COURT: We don't have it?

MR. LONG: I have the impound paperwork.

THE CLERK: (Inaudible) up to me.

THE COURT: No, we don't have the official impound paperwork.

THE CLERK: So I just messaged her to try and bring it up to me. So --

THE COURT: Okay.

THE CLERK: -- that will take -- we'll fill it out, and he'll have to come back after the lunch hour.

THE COURT: Okay.

Can you come back at 1:30, sir?

MR. LONG: Yes, I can. I have the impound paper, but only from --

THE COURT: No, we need --

MR. LONG: -- the 12th.

THE COURT: -- the official impound paperwork.

MR. LONG: Oh.

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THE COURT: Okay. You'll have to come back at 1:30, maybe 1:35. And you'll have to show your proof that you set it up downstairs. Come back up here --

MR. LONG: Uh-huh.

THE COURT: -- we'll give you release papers. You need to go there today and get it out, otherwise you're going to incur more charges, all right?

MR. LONG: Okay.

THE COURT: You can appeal the decision to the court if you want to do that on the ticket portion. That probably would include the impound too. But if you want to do that, you have 30 days in which to do so.

But right now, if you want your vehicle out, you'll have to go downstairs.

MR. LONG: Uh-huh.

THE COURT: Come and see the clerk here, and they will set everything up for you to go downstairs to do that.

MR. LONG: Okay.

THE COURT: Okay? All right.

THE CLERK: I'll probably give Cindy another call --

THE COURT: Okay.

THE CLERK: -- so that she can bring it up now.

THE COURT: Okay.

Here's the exhibits into the record here at this time. Thank you.

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Sir, just come over here. Have a seat against the wall.

Okay. No need to get up.

Thank you, gentleman.

MALE SPEAKER: You're welcome, sir.

THE COURT: See you later.

THE CLERK: Will you be in the office back there (inaudible).

THE COURT: Oh, I need to sign something, don't I?

THE CLERK: In just a few (inaudible).

THE COURT: Does she had the paperwork downstairs?

THE CLERK: She should.

THE COURT: Why doesn't she bring it to me?

THE CLERK: Are you going downstairs at all?

THE COURT: I'm going downstairs.

THE CLERK: Would you be able to talk to her?

THE COURT: Yeah, I'll talk to her.

THE CLERK: Okay.

THE COURT: Okay. I'll tell her.

THE CLERK: I guess I'll just wait like five minutes or so and see if I can --

THE COURT: Yeah. Can -- okay. I'll tell her.

(Conclusion of hearing)

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C E R T I F I C A T E

STATE OF WASHINGTON)
)
COUNTY OF SNOHOMISH)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of November, 2016.

Jennifer A.P. Albino, CET-661

Electronically signed by Jennifer A. P. Albino (601-130-579-3655) 7abb71a3-b5d9-4100-ba7f-0a56343de59c

EXHIBIT G

Parking Home
Parking Regulations
72-Hour On-Street Parking Ordinance
Curb Use Priorities
Disabled Parking
Driveways
Load Zones
Motorcycle Parking
Parking Enforcement
Parking-Related Governmental Regulations and Policies
Parking Tickets: Paying and Contesting
Restricted Parking Zone Program (RPZ)
Restricted Parking Zones Permit Fees
Shuttle Bus Loading Permits
Temporary No Parking Zones
Tow-Away Zones

City of Seattle 72-Hour On-Street Parking Ordinance

The City of Seattle has many signs posted around the city that limit the amount of time a vehicle may park on the street (such as a 2-hour limit between 7 a.m. - 6 p.m., etc.). Regardless of whether or not there is any sign posted, the City's Traffic Code does not allow a vehicle to be parked on a city street for longer than 72 hours. The Traffic Code also prohibits junk motor vehicles from being left on City streets (see **Abandoned Vehicle Hotline**) (**SMC 11.72.440**). Additionally, the Seattle Municipal Code (SMC) prohibits vehicles over 80 inches in width (such as RVs, tractor trailers, and larger trucks) from parking on most city streets (any street except those adjacent to Manufacturing or Industrial zoning) between the hours of midnight and 6:00 a.m. (**SMC 11.72.070**). The Seattle Police Department routinely enforces these ordinances and also responds to specific cases when alerted by complaints from the public - please use the non-emergency number (206-625-5011) to report violations.

Sometimes the ordinary parking restrictions on a street may change, such as to allow street cleaning, construction activity, special events or other unusual circumstances that require that the street be cleared of parked vehicles. When this happens, official signs (easels) will be posted announcing the temporary change to parking restrictions with the dates and times when no parking is allowed (see **Temporary No Parking Zones**). In some cases these signs may be set up with as little as 24-hour advance notice before the restrictions take effect. Vehicles must be moved by the time indicated or drivers may receive a citation and their vehicle may be impounded and towed.

Although some people may not use their vehicles on a regular basis (and therefore leave them parked on the street), the vehicles must still be moved every 72 hours and comply with all posted signs, including the ones announcing temporary parking restrictions that may go into effect after 24 hours. When a car is parked on a public street, drivers are encouraged to check their car at least once a day, even if their car is on a street where they are allowed to park up to the citywide 72-hour maximum.

If you believe your vehicle has been towed, please call (206) 684-5444 (Seattle Police Department). To learn about the impound process, please visit our **Tow-Away Zone** page.

To report an abandoned vehicle, call the Seattle Police Department Abandoned Vehicles Hotline at (206) 684-8763 or fill out **this form**.

For more information on the 72-hour On-Street Parking Ordinance, call (206) 684 ROAD (684-7623).

ADA Notice Notice of Nondiscrimination Privacy © 1995-2016 City of Seattle

EXHIBIT B

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

CITY OF SEATTLE, Plaintiff, vs. STEVEN GREGORY LONG, Defendant.	Citation No. 70836690 Case No. 203641306 DECLARATION OF LAURA BECK

I, LAURA BECK, declare as follows:

1) I am over the age of 18, and competent to testify to the following. I am currently a License and Standards Inspector, in the Finance and Administrative Services (FAS) Department, and I assist with the administration of the Seattle Police Department contract for impound services with Lincoln Towing. Prior to 2017, when the function was transferred to Seattle Municipal Court, I was designated as the FAS Hearing Officer and I conducted hearings on police impounds without citations.

PETER S. HOLMES
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

2) The impound and storage fees are set in the contract. These fees are designed to pay for the actual costs associated with towing and storage. Generally, the fees are paid directly to Lincoln Towing by the registered owner (RO) so the impounded vehicle can be released.

3) If the RO appeals the validity of the impound and/or the amount of impound and storage charges at the Seattle Municipal Court, and the court finds that the impound was proper (SMC 11.30.040), then the RO remains responsible for the impound and storage costs.

4) However, if the court finds that impound was not proper, then the City is held responsible for paying the impound and storage costs.

5) Mr. Long's situation does not fall squarely into either of these categories. It appears that Mr. Long entered into a payment plan (promissory note) with the Seattle Municipal Court in the amount of $547.12, plus a $10 setup fee. I have not seen previous time payment agreements. The judge ordered that the City pay $370.45 of the total charges which were $946.61. Currently, the City is responsible for the entire amount of $946.61, and it will be billed this amount in the ordinary course. The terms of Mr. Long's payment agreement reflect how he must pay the City back for the advancement of these funds. There is no explanation on the Vehicle Impound Hearing-Vehicle Release Form for the split charges. *See* Exhibit A.

6) Normally, if an impounded vehicle is not redeemed, the vehicle is set for mandatory auction pursuant to state law.

DATED this 28th day of March, 2017 at Seattle, Washington.

LAURA BECK

PETER S. HOLMES
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

THE MUNICIPAL COURT OF SEATTLE

20364113C6

VEHICLE IMPOUND HEARING - VEHICLE RELEASE FORM

CITATION NO. 70836690 INFRACTION CODE 11.72.140

DEFENDANT'S NAME Long, Steven DOB 11/5/59

ADDRESS 1265 S. Main St Ste 105

CITY Seattle STATE WA ZIP 98144

VEHICLE LICENSE # C48803B STATE WA

VEHICLE MAKE: GMC YEAR: 2000 STYLE:

REGISTERED OWNER: Long, Steven

IMPOUND DATE: 10/12/16 TOW COMPANY: Lincoln

FINDINGS

The infraction (if any) was: COMMITTED ✓ NOT COMMITTED _____

The scofflaw status of the vehicle is: UPHELD _____ DENIED _____

The impound of the vehicle was: PROPER ✓ IMPROPER _____

The Defendant: _____ IS IN A STATE OF EXTREME FINANCIAL NEED, BASED UPON A REVIEW OF HIS/HER CURRENT INCOME, ASSETS AND LIABILITIES.

The Defendant: _____ CAN EFFECTIVELY GUARANTEE PAYMENT BY EXECUTING A PROMISSORY NOTE FOR THE TOTAL AMOUNT OWED, INCLUDING ALL RELEVANT FINES, FEES, AND COSTS, PLUS INTEREST.

IMPOUND VEHICLE RELEASE ORDER

_____ [SCOFFLAW] RELEASE vehicle upon confirmation that the Defendant either paid all costs, fines, fees, and penalties owed to the Court and its collection agency, as well as the immobilization release fee and costs of impound and storage, and/or upon confirmation that the Defendant signed a promissory note, payable to Seattle Municipal Court/City of Seattle, for some or all of the afore-mentioned amounts.

_____ RELEASE vehicle upon payment to the towing company of impound and storage fees of _____

✓ RELEASE vehicle upon confirmation that the Defendant signed a promissory note, payable to Seattle Municipal Court, in the amount of $ 517.12, plus interest. Def owes $517.12

_____ RELEASE vehicle to the Defendant at no charge to the Defendant. Lot owes $70.45

THE VEHICLE MUST BE CLAIMED FROM THE TOWING COMPANY BY MIDNIGHT OF THE DATE OF THIS ORDER. DEFENDANT MUST PAY ANY ADDITIONAL STORAGE CHARGES THAT ACCRUE AFTER MIDNIGHT.

11/2/2016 _____

Date Judge/ Magistrate

710-013 VehicleImpoundHearing – VehicleRelease – January 2012 Distribution: white – Court, canary – Defendant, pink – LCA

Lincoln Towing (5405)
3919 Pasadena Pl. NE
Seattle, WA 98105
Phone: 206-622-0415

Call Receipt

Tow Ticket #: 588075
Completion Date: 11/2/2016

Customer: City Of Seattle-Hearing

PO #: 7933 RO #: C708366901 Membership #:

Vehicle: 2000 GMC Sierra 2500 White Crew Cab Tag: WA C48853B
VIN: 1GTGK23RXYF501209 Odometer: Owner Name: Long, Steven Gregory

Towed From: 951 Poplar Pl S, Seattle, WA Call Taken/Appointment
Towed To: 12220 Aurora Avenue N,Seattle,WA 10/12/16 16:49
Date Into Lot: 10/12/16 22:19 Date Out: 11/02/16 16:52 Stop Billing Date:
Lot Location: Lincoln Aurora - 6c Released By: mj
Control Customer: Seattle PD Police #: 708366901 Elapsed Time (mins.): 330

Tow Charges	
Light Duty Tow (Class A)	112.50
1.00 Hour(s) @ $112.50/Hour	
Extra Truck	82.88
Extra Truck	82.88
City Fee	35.00
Storage Charges	
Outdoor Storage	553.50
0.50 Day(s) @ $0.00/Day plus 20.50 Day(s) @ $27.00/Day	
Sub Total ($):	866.76
Tax ($):	79.85
Total Price ($):	946.61
Payments Received ($):	0.00
Amount Due:	$946.61

Released To: Long, Steven G, 7827 Rainier Av S Apt 404, Seattle, WA 98118
Registered Owner Information:
Long, Steven Gregory 7827 Rainier Ave S Seattle WA 98118-4153

Disclaimer: I hereby state that I am legally entitled to the above described vehicle and its contents and assume all responsibility for same. Lincoln Towing (5405) will not assume any liability for a vehicle prior to their physical possession or after their release of the vehicle. I have read and understand this statement. Signature: X [signature]

Acknowledgment of Person Redeeming Vehicle: As the person, vehicle insurer or a vendor working on behalf of the vehicle insurer seeking to redeem an impounded vehicle, I acknowledge receipt of this written notice of rights in redeeming the vehicle. I understand that I have the right to request a hearing in district/municipal court and have received a form to make such a request. I have received a copy of the towing and storage receipt, the name of the person or agency authorizing the impound, and I acknowledge that this Right of Redemption and Opportunity for a Hearing form will serve as a receipt for the vehicle. Your request for a hearing must be received by the district/municipal court within 10 days of this date.
Signature of person seeking to redeem the vehicle: X [signature]
Phone 206-446-5282 Date 11/02/16 Time 4:54 pm a.m./p.m.

https://s3.amazonaws.com/txc-tops-image-store/122072176571b... 3/27/2017

EXHIBIT C

IN THE SEATTLE MUNICIPAL COURT FOR KING COUNTY
STATE OF WASHINGTON

CITY OF SEATTLE,

Plaintiff,

v.

STEVEN GREGORY LONG,

Defendant.

No. 203641306

ORDER ON DEFENSE MOTION FOR SUMMARY JUDGMENT

BACKGROUND

This matter came before the under-signed judge on a defense motion for summary judgment. Mr. Long, is represented by and through his attorneys James E. Lobsenz, Alison Bilow, Ann LoGerfo and Yurij Rudensky. The City of Seattle is represented by Peter Homes, Seattle City Attorney, by and through his Assistant City Attorney Michael K. Ryan.

Mr. Long moves this court to find the citation and impoundment of his vehicle unconstitutional under the Eighth and Fourteenth Amendment and a violation of the State's Homestead Act.

This case was first scheduled for an impound mitigation hearing on October 20, 2016. Mr.

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Long was present on that date and requested a contested hearing, which was scheduled and held on November 2, 2016. At that hearing, Magistrate Eng found that the infraction had been committed and the impound was proper. He waived the $44 traffic infraction fee and reduced the amount of impound fees that Mr. Long was responsible for from $917.57 to $547.12. A time payment agreement was signed by Mr. Long, which enabled him to get his vehicle out of impound.

Mr. Long timely appealed. Seattle Municipal Court Local Rule (SMCLR) 73 applies to proceedings pursuant to Chapter 11.30 of the Seattle Municipal Code (SMC) and indicates that such hearings shall be a trial *de novo*. An initial hearing was conducted on December 21, 2016 at which time the parties requested a hearing for this summary judgment motion and a briefing schedule. Arguments were heard on April 13, 2017.

MATERIALS RELIED UPON

The Court reviewed the following materials in deciding this motion:

1. Defendant's Motion for Summary Judgment.
2. Declaration of Ann LoGerfo in Support of Defendant's Motion for Summary Judgment and all exhibits attached thereto.
3. Declaration of Steven Gregory Long and all exhibits attached thereto.
4. City of Seattle's Opposition to Defendant's Motion for Summary Judgement.
5. Declaration of Laura Beck and the exhibit attached thereto.
6. Declaration of Michael K. Ryan and all exhibits attached thereto.
7. Reply in Support of Motion for Summary Judgment.
8. Reply Declaration of Steven Gregory Long.
9. Declaration of James E. Lobsenz in Support of Motion for Summary Judgment and all exhibits attached thereto.

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10. (2nd) Declaration of Ann LoGergo in Support of Motion for Summary Judgment and all exhibits attached thereto.

11. Defendant's Notice of Additional Authority in Support of Motion for Summary Judgment.

12. City of Seattle's Statement of Supplemental Authority.

13. Defendant's Supplemental Brief Based On Evidence Provided by The City After The Summary Judgment Motion.

14. Declaration of Ann LoGerfo in Support of Supplemental Brief and all exhibits attached thereto.

SUMMARY OF FACTS

Mr. Long has lived in his truck, a white GMC Sierra 2500 Crew Cab, since 2014. On July 5, 2016, he parked his truck, which he believed to be inoperable, on property owned by the City of Seattle at the corner of Norman and Poplar streets. Mr. Long did not seek permission of the City of Seattle to park his truck at this location, nor has he ever received any permission from the City to remain in that location.

Mr. Long is a self-described skilled tradesman with experience in plumbing, electrical, landscaping, painting, construction, machine operation and car mechanics. He has worked for temporary agencies such as People Ready or Labor Ready since 1998 and works janitorial jobs at Century Link Field. He keeps his tools, along with other personal belongings in the truck.

On October 5, 2016, three Seattle Police Department (SPD) officers were dispatched to an area located near Mr. Long's truck for an unrelated complaint of a homeless encampment. While in the area, the officers' attention was drawn to Mr. Long's vehicle by a business owner who claimed someone associated with the truck had threatened his employees with a knife.

Due to the passage of time since the alleged threat and the lack of victim or witness evidence, the officers declined to investigate the allegation beyond speaking with Mr. Long. They did, however, inform Mr. Long that he could not remain on City property for more than 72 hours and summoned a parking enforcement officer (PEO) to affix notice to Mr. Long's truck.

The SPD officers, while waiting for the PEO to arrive observed that it appeared that Mr. Long lived in his truck. Mr. Long told the officers that he would move the truck, but he needed a part to repair it. Mr. Long removed the 72 hour tag placed onto his truck by the PEO and remained by the truck for three days to ensure that it was not towed. He made no attempt to move his truck. Nor did he repair the truck.

On October 12, 2016, while Mr. Long was working a janitorial job at Century Link Field, the PEO that issued the 72 hour notice returned to the lot at Norman and Poplar streets. Seeing Mr. Long's vehicle in the same location, she contacted Lincoln Towing. The truck was impounded that evening. When Mr. Long returned after work, his truck was gone but some of his property remained. Among the property left on the lot were some tarps and bicycles. He immediately called 911 and learned that his truck had been towed. Mr. Long then spent part of the early morning hours of October 13th trying to make a shelter with the remaining property. At some point, he gave up and spent the remainder of the early morning hours at Peter's Place, a homeless shelter that provides services to Mr. Long and others.

On October 18, 2016, Mr. Long went to Lincoln Towing to retrieve some of his belongings. He was provided with a Notice of Redemption and Impound Hearing form.

The day after the contested hearing (referenced above) in front of Magistrate Eng, Mr. Long removed his truck, which he still considers his residence despite not living in it since October 12, 2016, from Lincoln Towing and drove it to a friend's property in Brier, where it remains to date.[1] Mr.

[1] Ironically, Mr. Long argues that he cannot live in Brier, in part, because the Brier Municipal Code prohibits one from living in a vehicle on private property for more than two weeks every six months.

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Long remains in Seattle, living in a make-shift shelter on the lot at Norman and Poplar streets so he can be close to employment opportunities and Peter's Place.

ANALYSIS

1. The infraction was properly issued and the impound was proper.

In its entirety, SMC 11.10.040 states:

> This subtitle is enacted as an exercise of the police power of the City to protect and preserve the public peace, health, safety and welfare, and its provisions shall be liberally construed for the accomplishment of these purposes. It is expressly the purpose of this subtitle to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this subtitle. It is the specific intent of this subtitle to place the obligation of complying with its requirements upon the owner or operator of the vehicles or upon the pedestrian within its scope, and no provision of nor term used in this subtitle is intended to impose any duty whatsoever upon the City or any of its officers or employees, for whom the implementation or enforcement of this subtitle shall be discretionary and not mandatory. Nothing contained in this subtitle is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from the failure of the owner or operator of a vehicle or a pedestrian to comply with the provisions of this subtitle, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this subtitle on the part of the City by its officers, employees or agents.

(emphasis added.)

SMC 11.72.440(B) states:

> No person shall park a vehicle on any street or other municipal property for a period of time longer than seventy-two (72) hours, unless an official posted sign provides a shorter period of time, or unless otherwise provided by law.

On October 5, 2016, Mr. Long was told by SPD officers that he could not remain on the property located at Norman and Poplar streets for more than 72 hours. The PEO additionally placed a notice on Mr. Long's truck indicating that if it were not moved before the 72 hour period ended, the truck would be subject to being towed. Mr. Long acknowledged his understanding that he might lose the truck if he did not move it to the SPD officers on the scene.

Mr. Long did not move his truck. Instead, he removed the notice from his truck and stood by it for 72 hours in an effort to avoid it from being towed. When the PEO returned to the lot at Norman and Poplar on October 12th, the truck was still there. A citation was issued for violation of 11.72.440 and the truck was impounded pursuant to 11.72.440(E) and SMC Chapter 11.30.[2]

Mr. Long was fully aware that he would be cited and that his truck might be towed, yet he did nothing to avoid those consequences other than turning the truck on several times to see if the battery was charged, counting his money and thinking about taking it on a test run. Deposition upon Oral Examination of Steven Gregory Long.

As circumstances later unfolded, Mr. Long's truck was drivable. Had he made an effort to move the vehicle all of the subsequent events would not have occurred. By leaving the truck at the location for seven days after receiving notice to move it within 72 hours, Mr. Long clearly violated the ordinance and the Court finds that the citation was properly issued and the impound was lawful.

2. Mr. Long's claim of a violation of substantive due process under the 14th Amendment fails.

Mr. Long argues that the City acted with deliberate indifference to his personal, physical safety by leaving him without shelter when it impounded his truck and that the act of towing his truck on October 12th, the City placed him in a position of danger that he would not have otherwise faced.

[2] SMC 11.30.010 states: Impoundment means removal of a vehicle to a storage facility either by an officer or authorized agent of the Seattle Police Department or by a contractor for towing and storage in response to a request from an officer or authorized agent of the Seattle Police Department or the Seattle Housing Authority.

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"Substantive due process 'forbids the government from depriving a person of life, liberty, or property in such a way that "shocks the conscience" or interferes with the rights implicit in the concept of ordered liberty.'" Corales v. Bennett, 567 F. 3d 554, 568 (9th Cir. 2008)(internal citations omitted.) Ultimately, the substantive component of the Due Process Clause is violated by executive action only when it "can properly be characterized as arbitrary, or conscience shocking in a constitutional sense." Collins v. City of Harker Heights, 503 U.S. 115, 128 (1992).

"In examining whether an officer affirmatively places an individual in danger, [the court does] not look solely to the agency of the individual, nor [does the court] rest [its] opinion on what options may have been available to the individual. Instead, [the court] examines whether the officer left the person in a situation more dangerous than the one in which they found him." Kennedy v. City of Ridgefield, 439 F.3d 1055, 1062 (9th Cir. 2006). To determine whether an officer affirmatively placed an individual in danger, a court must consider whether 1) the state action affirmatively placed an individual in danger that he or she would not have otherwise faced; 2) whether the danger was known and obvious; and 3) whether the official acted with deliberate indifference to that danger. Henry A. v. Willden, 678 F.3d 833, 844 (9th Cir. 2012).

An officer leaving a severely intoxicated woman alone in a high-crime area at 2:30 in the morning, where she was raped (Wood v. Ostrander, 879 F.2d 583 ((9th Cir. 1989)), an officer exposing an individual to an unstable and vengeful neighbor by telling that neighbor that he accused him of sexually assaulting a minor (Kennedy v. City of Ridgefield, *supra*) and officers ejecting a visibly intoxicated patron of a bar on a bitterly cold night while wearing a t-shirt (Munger v. City of Glasgow, 227 F.3d 1082 (9th Cir. 2000)) are examples of acts of deliberate indifference found to subject the government to liability.

Here, the evidence establishes that the PEO who affixed the notice of proposed impoundment returned to the City lot one week after affixing the notice, rather than 72 hours later, as a courtesy to allow Mr. Long extra time to get the part he said he needed to move the truck. The towing of the truck was no arbitrary action, but rather the uniform application of the City's traffic code.

There is no evidence before the Court as to the identity of the tow operator. Nor is there any evidence before the Court regarding whether or not the PEO remained at the lot while the tow occurred. There is evidence that tarps and bicycles were left on the site. After immediately calling 911 and learning that his truck had been towed, Mr. Long spent several hours trying to create a shelter with those tarps. Mr. Long gave up and spent the remainder of the early morning hours at Peter's Place. Several days later, Mr. Long went to Lincoln Towing to get some of his belongings and returned to the lot, where has remained in make-shift shelter ever since.

Mr. Long claims that the act of towing of his truck placed him in danger, the result of which was him coming down with the flu for a week in October. While the weather was wet and windy that night, as with the plaintiffs in Sanchez v. City of Fresno whose claim for suffering from various physical and psychiatric conditions as a result of exposure to weather was denied (2014 WL 2042058 (E.D. Cal. May 16, 2014)), Mr. Long has not provided any evidence that his exposure to the wind and rain was the cause of the flu. Nor can he point to any action by the City that "can be properly characterized as arbitrary or conscience shocking in a constitutional sense." Collins, *supra*.

For these reasons, the defense motion for summary judgment for a violation of substantive due process is denied.

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3. Defendant's motion for summary judgment under the Homestead Act fails.

Article 19, section 1 of the Washington State Constitution states "The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families." As a result of this provision, the legislature enacted the homestead statute in 1895. In 1993 the Homestead Act (RCW 6.13) was amended to include personal property in the definition of a homestead. The Final Bill Report clarifies the legislative intent when amending the statute:

> Because some Washington citizens reside on their boats or in their cars or vans, it has been recommended that the homestead exemption's scope be expanded to include any personal or real property that the owner uses as a residence.

The summary included on the Final Bill Report further indicates:

> The definition of homestead is expanded to include any real or personal property that the owner uses as a residence.

A homestead is automatically protected from attachment and from execution or forced sale for the debts of the owner from and after the real or personal property is occupied as a principal residence of the owner. RCW 6.13.040(1), 6.13.070.

This is in fitting with other jurisdictions, which have ruled that a semi-truck cab and boats used as primary residences are exempt from judgment in bankruptcy proceedings (In re Laube, 152 B.R. 260 (Western District of Wisconsin 1993), In re McMahon, 60 B.R. 632 (Western District of Kentucky 1986) and In re Ross, 210 B.R. 320 (Northern District of Illinois, Eastern Division 1997)). In each of these cases, the homeowner declared bankruptcy and the trustees sought to sell the personal property in which the debtors lived to satisfy judgments imposed.

There appear to be no Washington cases addressing exactly the issue raised here by Mr. Long.

The debt at issue here is the cost of impound and storage fees that Mr. Long had to pay to get his car from Lincoln Towing. 11.30.120(B) requires a person legally authorized to redeem an impounded vehicle to pay the towing contractor the cost of the removal, towing, storage and an administrative fee.

While the Court agrees that Mr. Long has a homestead in his truck under the statutory language and the legislative intent and his truck could not be sold to satisfy a bankruptcy debt, the circumstances here are not analogous to the situations described in the above cases.

First, there was no sale of the truck, let alone a forced sale to satisfy debts. The vehicle was impounded due to a violation of the traffic code. RCW 46.55.130 indicates that a vehicle shall be sold at auction if the vehicle is not claimed after fifteen days from the date of notice of impoundment is sent to the registered and legal owner. If a hearing is scheduled to challenge the impound, the court must notify the tow company within five days after the request for the hearing. The tow company cannot sell the vehicle at auction while the case is pending. RCW 46.55.120. Mr. Long challenged the impound and the court notified the tow company. The vehicle was not sold. Thus, Mr. Long does not have standing to challenge RCW Chapter 46.55 and the homestead exemption does not apply.

Secondly, Mr. Long placed himself in jeopardy of losing his home by not moving it when provided with verbal and written notification that he may lose it. It is undeniable that people living in non-traditional homes like boats or vehicles face obstacles that traditional homeowners do not face. However, "[p]arking is not a right, but a privilege, and, as such, is subject to reasonable regulation under the police power." Sandona v. City of Cle Elum, 37 Wn.2d 831, 840 (1951) (quoting Hickey v. Riley, 177 OR. 321, 162 P.2d 371, 375 (1945); Gardner v. City of Brunswick, 197 GA 167, 28 S.E.2d 135 (1943)). Going back to the language of the city traffic code: "It is expressly the purpose of

this subtitle to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this subtitle." SMC 11.10.040 (emphasis added). In other words, the traffic ordinance is to be administered uniformly.

The officers told Mr. Long that he might lose his truck, he acknowledged that he understood this, told the officers that he would move it and yet took no action to do so. His belief that the truck was inoperable has been demonstrated to be incorrect. Had he moved the truck one block he could still be living in that truck in Seattle. In fact, there is nothing to prohibit Mr. Long from bringing his truck back to the lot at Norman and Poplar street and living in it at that location. The only requirement under the City code is that no one shall park on any street or municipal property for more than 72 hours. Mr. Long's actions are analogous to a gambler betting the title to his home in a poker game and then declaring that the winner of the game cannot take title because of a homestead exemption.

The defense motion for summary judgment due to violation of the Homestead Act is denied.

4. Defense motion for summary judgment for violation of the Eighth Amendment is denied.

Mr. Long argues that the impoundment of his truck, in addition to the imposition of a $44 fine for the underlying traffic infraction, is a violation of the excessive fine clause of the Eighth Amendment. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

Mr. Long argues that the impound was a penalty in addition to the fine for the violation. Further, he argues, the costs associated with the removal, towing, storage and an administrative fee which he agreed to pay over the course of one year to avoid having his car sold at an auction are grossly disproportionate to the gravity of his offense.

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17-2-15099-1

The U.S. Supreme Court established a two part test to determine if a fine or forfeiture violates the Excessive Fines Clause. The first enquiry is whether some portion of the penalty is imposed as a punishment for the offense. United States v. Bajakajian 524, U.S. 321, 327-28, 118 S.Ct. 2028, 141 L.Ed. 2d 314 (1998). A plain reading of the language of SMC 11.72.440(E) supports Mr. Long's argument that impound is, at least in part, a penalty. "Vehicles in violation of this section are subject to impound as provided for in Chapter 11.30 SMC, in addition to any other *penalty* provided by law." (emphasis added.) This language appears to have been added to the ordinance in September of 2000. At that time, the City Council amended the time that vehicles may park on a street or other city owned property from 24 hours to 72 hours in an attempt to encourage citizens to use alternative forms of transportation. No explanation that the court can find was given for adding the language regarding impoundment.

While this sanction, as defense has acknowledged, is also used as a deterrent, if the sanction imposed is in any way punitive, then the second enquiry is whether the fine or penalty is grossly disproportionate to the gravity of a defendant's offense. Bajakajian, 524 U.S. at 334. When assessing whether a fine is grossly disproportionate, a court considers "1) the degree of defendant's reprehensibility or culpability; 2) the relationship between the penalty and the harm to the victim caused by the defendant's actions; and 3) the sanctions imposed in other cases for comparable misconduct." Jones v. St. Louis Parking Violations Bureau, 2006 U.S. Dist. LEXIS 30881, at 7 (Eastern District of Missouri, May 8, 2006)(citing Cooper Indus., Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 435, 121 S. Ct. 1678, 149 L.Ed. 2d 674 (2001)

While the infraction at question here certainly does not rise to the level of reprehensibility, Mr. Long's behavior in ignoring the law does increase his culpability and changes the proportionality of the penalty. He ignored the opportunity he had to avoid getting a ticket in the first place by making

no attempt to move the vehicle – whether it was by driving it or getting help pushing it to another location. He then purposely removed the violation sticker and then stayed close to the truck with the hope that the matter would go away.

Although the City may not have suffered any actual harm above and beyond Mr. Long's non-compliance with the laws, as the court in Jones pointed out, it has an inherent interest in the uniform application of its traffic and parking ordinances. As stated elsewhere, the traffic code expressly states that the purpose of the code is "to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of the subtitle." SMC 11.10.040. Mr. Long is asking this court to create a particular class or group of persons that can ignore the traffic and parking laws of the City. Such an exemption must be made by the legislative branch of government and not the Court.

Continuing with the test applied in Cooper Industries and Jones, *supra*, the sanctions imposed in this case were the same that would be imposed in any other violation of 11.72.440 and there is no evidence to suggest the impound fees imposed were harsher than the sanctions imposed in other cases for comparable misconduct. Rather, Magistrate Eng reduced the storage and impound fees. Mr. Long argues that the City forced him to agree to pay to have his car removed from impound. The City, through its SPD officers, told Mr. Long that he needed to move his car to avoid losing it. He could have completely avoided those fees, but by his intentional disregard of the warning he had been given, Mr. Long did not do so.

His truck is not subject to forfeiture if he does not pay the storage and impound fees as Mr. Long argues. The time payment agreement attached to Mr. Long's declaration is clear as to what the

result of non-payment would be.

Thus, under the reasoning of the Jones Court, Mr. Long's claim of a violation of the Excessive Fines Clause fails.

Mr. Long further argues that in addition to his truck being impounded, his tools were forfeited and he has been deprived of his future ability to earn a living. The evidence in this case clearly does not support that claim. The truck and Mr. Long's tools (or at least some of them) are at a friend's home in Brier. There is nothing preventing Mr. Long from getting those tools and there is nothing in the record to support that he has been unable to work as a result of this incident.

There is also nothing in the record to support Mr. Long's allegation that he cannot use his truck as shelter. He may not be able to live in it for more than two weeks out of every six months while it remains in Brier, but there is nothing that prohibits him from returning the vehicle to Seattle other than his unfounded fear that it might be towed again.

For the foregoing reasons, the defense motions for summary judgment are denied.

DATED this 10th day of May, 2017.

KAREN DONOHUE, JUDGE
SEATTLE MUNICIPAL COURT

17-2-15099-1