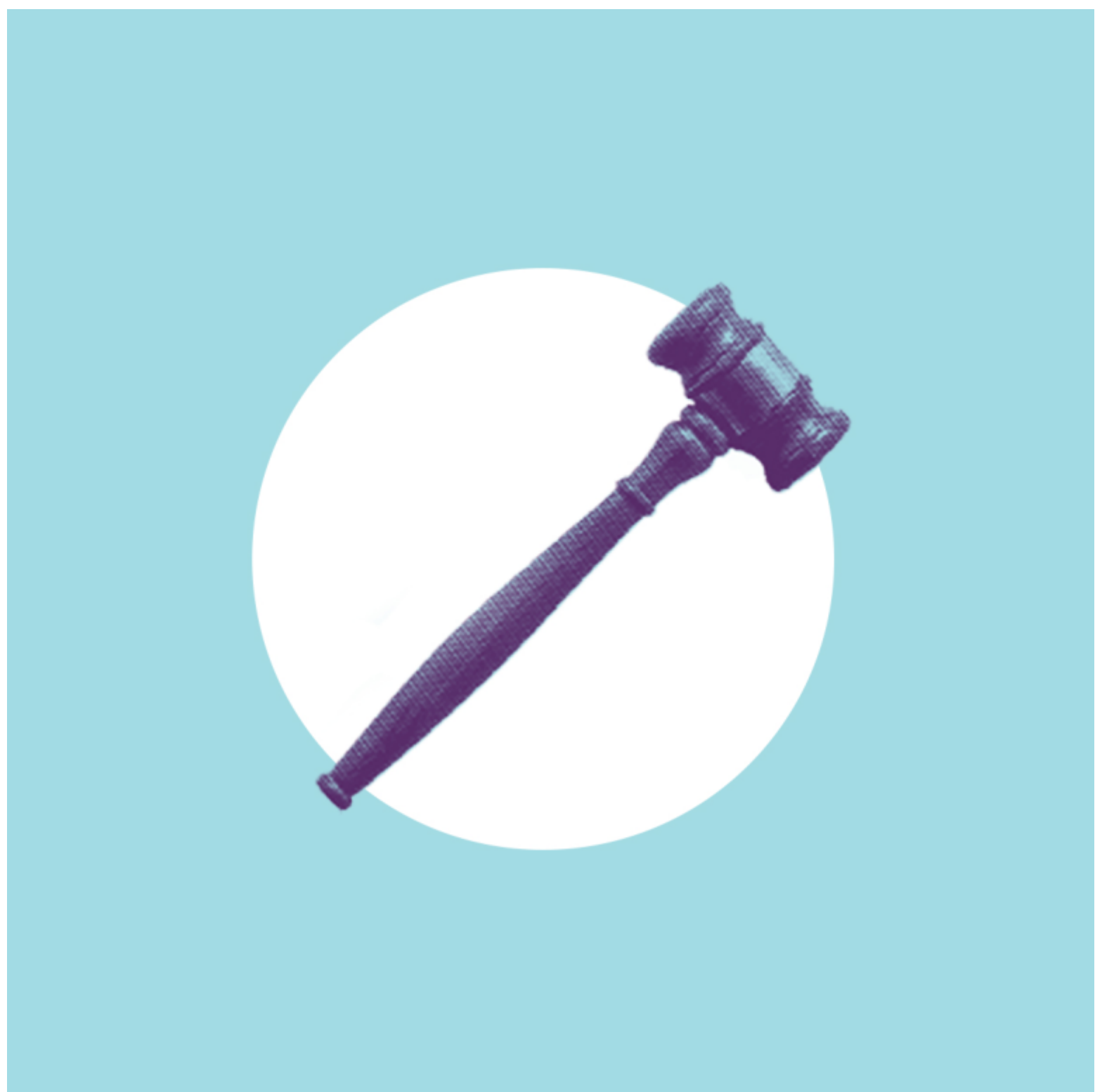


GASQUE V. CITY OF PORTLAND



Vindication in “Know Your Rights” Case

November 7, 2012 — Nearly three years to the day after he was arrested in Old Town in downtown Portland for refusing to consent to a Portland police officer’s request to search him without probable cause, Jose Gasque received justice in a Multnomah County courtroom.

Late on the night of November 14, 2009, Jose Gasque and Mike Be Dell were enjoying the music and bar scene in Old Town Portland. In between establishments, Mr. Gasque and Mr. Be Dell stopped for a cigarette in what they thought was an alley between NW Couch and Burnside on the property of the abandoned Burger King. While Mr. Be Dell finished his cigarette and Mr. Gasque sat on a curb, a Portland police cruiser drove onto the property shining a light on the men. Officer Tequila Thurman asked the men for identification and what they were doing. Both men cooperated and the records check of their identification showed no outstanding warrants, arrests or convictions for either man.

Rather than asking the men to move on, Officer Thurman told the men she wanted to search them. Mr. Gasque produced his ACLU “Know Your Rights” wallet card and respectfully told the officer that he was invoking his Fourth Amendment rights and declined to consent to a search.

The officer made it clear that if they did not consent to a search she would arrest them. Mike Be Dell consented, was searched and allowed to leave the premises. Jose Gasque again declined to give up his Fourth Amendment right believing he had done nothing to warrant this intrusion. The officer arrested Mr. Gasque for criminal trespass, searched him incident to the arrest, handcuffed and transported him to the Multnomah County jail where he was booked, photographed, fingerprinted and held for approximately five hours.

Soon after this event, Mr. Gasque contacted the ACLU of Oregon.

It did not seem right to him that he was arrested for invoking his constitutional right to be free from an unreasonable search of his person. The ACLU agreed. The ACLU of Oregon agreed to defend Mr. Gasque in his criminal case and to bring the subsequent civil case against the Portland Police Department for violating his rights. Months after the arrest the District Attorney, after reviewing the evidence in Mr. Gasque’s defense, dropped the criminal charges moments before the violation hearing was set to begin.

Next the ACLU of Oregon brought a civil lawsuit against the city of Portland for violation of Mr. Gasque’s constitutional rights. This week, after a three day jury trial, Jose Gasque was vindicated.

Multnomah County Circuit Court Judge Kathleen Dailey held that as a rule of law, the property where Mr. Gasque and Mr. Be Dell were confronted by police was open to the public, and therefore there was no probable cause for Officer Thurman to arrest Mr. Gasque for criminal trespass. Judge Dailey then instructed the jury to return a directed verdict finding that Mr. Gasque succeeded on his claims of false arrest, assault and battery. Based on these findings the jury awarded Mr. Gasque \$11,250 to compensate him for damages stemming from the violation of his constitutional rights.

We extend our thanks to ACLU cooperating attorneys Tiffany Harris and Ben Anderson of Pacific Law Group who defended Mr. Gasque at the violation hearing and worked on the initial stages of the civil lawsuit. A special thanks goes to Bronson James of JDL Attorneys who was the lead trial attorney for Mr. Gasque’s claims against City of Portland. Our appreciation and congratulations also goes to ACLU of Oregon Legal Fellow Emily Garber who second chaired the trial.

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