

1989

Logan City v. Michael Stacey Thatcher : Reply Brief

Utah Court of Appeals

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Cheryl A. Russell; Logan City Prosecutor; Attorney for Respondent.

David R. Daines; Attorney for Appellant.

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890206

UTAH COURT OF APPEALS

LOGAN CITY,)	
Plaintiff, Respondent)	Case No. 890206-CA
vs.)	Case Type: APPEAL
MICHAEL STACEY THATCHER,)	PRIORITY NUMBER 2
Defendant, Appellant.)	

REPLY BRIEF

CHERYL A. RUSSELL
Logan City Prosecutor
255 North Main
Post Office Box 527
Logan, Utah 84321
Telephone: (801) 752-3060

DAVID R. DAINES
Attorney for Appellant
USU Box 1328
Logan, Utah 84322
Telephone: (801) 753-2721

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Logan City Prosecutor
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Post Office Box 527
Logan, Utah 84321
Telephone: (801) 752-3060

DAVID R. DAINES
Attorney for Appellant
USU Box 1328
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CORRECTED STATEMENT OF FACTS

The Statement of Facts in the City's Brief is an obvious attempt to confuse the Court about three pronged relevant facts simply stated as follows:

1. The Logan City Police Department in direct contravention of State statute and its own city ordinance, placed a school zone 20 m.p.h. illegal speed trap on U.S. Highway 89, Fourth North, a block away from where such a school zone would have "passed" a school or grounds and thus been legal. The legal speed limit on U.S. 89 fixed by city ordinance was 40 m.p.h. On December 22, 1988 Michael Thatcher was trapped traveling 6 miles per hour under the legal 40 m.p.h. speed limit, under the pretext of the ultra vires 20 m.p.h. school zone.

2. The criminal proceeding was commenced by the issuance and service of a Circuit Court headed summons and information issued by the police officer, misrepresenting that he had the authority of the Court to issue and serve the summons and information. This illegal traffic ticket-summons-information is ultra vires of Utah's permissible "citation" content statute. The "ticket" is also an outrageous false judicial notice and its issuance and service is the impersonation of an officer of the court under Utah criminal statutes. All other Utah law

enforcement agencies use citations that strictly conform to the content limitations of the citation statute.

3. The City conceded Point 2 above by default in the Karen Thatcher case, but continued to use the false judicial notice tickets in this case after judicially admitting their illegality.

SUMMARY OF REPLY ARGUMENTS

A careful examination of the City's Answer Brief reveals judicial admissions of two long-standing outrageously unconstitutional practices of, (1) Logan police enforcement of 20 m.p.h. "school zones" on U.S. Highways and main thoroughfares, expressly prohibited by both the state and city legislative bodies, and (2) police officers issue and serve on the street, printed Circuit Court headed summons and informations in lieu of the traffic "citation" whose permitted contents are expressly limited by statutes and which are false judicial notices. The "school zone" and citation legislative limitations were both imposed to prevent the exercise of arbitrary and capricious police powers with fund extraction motives. This Logan City example is the realization of the worst of all fears of the legislative and constitutional fathers that could be foreseen if police "fund raising powers" were not strictly limited by statute. The police issuance and service of false summons and informations is aggravated in this case

because this false printed notice was "served" after the City admitted by default in the Karen Thatcher appeal in this Court that the false summons-information practice was illegal. The application of objective judicial interpretation standards to the laws and arguments in the briefing of this case necessarily leads to the conclusion that Logan City functions de facto with apparent popular support on an anti-rule of law -- anti-constitution basis in general reckless disregard and hostility to constitutional and statutory limitations on police powers.

The city has clearly demonstrated to this court that it intends to ignore this court's orders and continue its historical ultra vires fund-raising practices in open hostility to the rule of law by continuing the false judicial notice practice after conceding by default its illegality in the Karen Thatcher case. The same can be expected of the ultra-vires speed trap issue. The appellate courts of this state will hopefully some day before it is too late recognize that in Cache County, popular local government in all branches has ceded from the rule of constitutional law as certainly as the south ceded from the Union. Unfortunately there are a number of reported Utah appellate court decisions that give some aid and comfort to the popular Cache County local option right to intellectually innovate its continuing so-called "better

system." Thatchers urge this court to take notice of the extraordinary demands of this case and exercise its extraordinary writ powers to restore the locally unpopular rule of constitutional law to Logan City and Cache County local government.

It is submitted that most charitably speaking all the City's arguments in its brief are absurd and spurious if not intentionally deceptive. When viewed from an objective judicial perspective, the frightening reality in Cache County is that with few exceptions, those same absurd arguments regularly prevail in Cache County courts on a daily basis where they have adopted a practical merger of the executive and judicial branches of local government as evidenced by the record in this and countless other cases and leave constitutional issues to federal courts.

It is respectfully submitted that the Utah appellate judiciary has a duty under these circumstances to cull out this anti-constitutional local government anomaly. This court should not leave the job entirely to the federal courts who will soon be faced with resolution of class actions of gigantic proportions arising out of both this case and the Karen Thatcher case facts.

POINT I
UNDER STATE AND CITY LAW THE CITY POLICE HAVE NO
JURISDICTION TO CREATE 20 M.P.H. SCHOOL ZONES A
BLOCK DISTANT FROM THE SCHOOL AND GROUNDS.

Where, as in this case, the state statutes and city ordinance both expressly limit school zones to "when passing a school or its grounds" it is absurd to argue as the City does that the police have the discretion to stretch "passing" to include a block away from the school on the pretext that "pass" really means "near" or "close" and they claim discretion in deciding how far away is "near" or "close." The potential, if not real consequences of this elastic police power doctrine are downright horrifying.

For lack of a record, consider this hypothetical. Favored lawyer "L" discovers the jurisdictional defect and works a deal with city prosecutor "B" to dismiss tickets against his clients on the "pass" means "pass" interpretation. Under this arrangement the City continues to collect fines and points against the rest of the unwitting and unrepresented public on the pretext that for unwitting students "pass" really means "close" or "near." The city prosecutor then argues to an appellate court against unfavored lawyer "D" that "pass" means "close" including a block away!

The argument is ridiculous that there were great dangers to children here since the City's paid patrolwoman was sitting in her pickup because there were no pedestrians

in view to protect or escort across the street with her hand-held STOP sign.

The argument is patently false that the "state" established this school zone, though the converse is probably true that only the state has jurisdiction even in a proper case to impose a school zone on U.S. Highway 89.

Contrary to the City's argument that it is "unclear" that we raised this argument, it is crystal clear that we did in both motions and arguments make multiple claims that 40 m.p.h. was the only legal posted speed limit at the time and place. However, since the issue is jurisdictional, it may be raised at any time and is therefore a moot point.

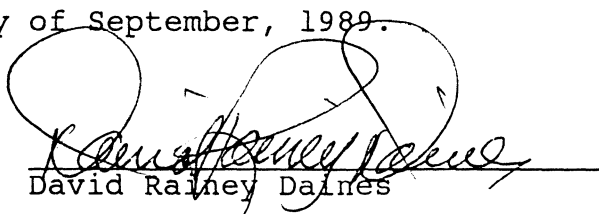
POINT II

THE CITY DOES NOT ANSWER THATCHERS' ARGUMENT THAT THE TICKET WAS AN OUTRAGEOUS FALSE JUDICIAL NOTICE RATHER THAN A STATUTORILY AUTHORIZED CITATION.

The City's Point II Argument, pages 8 and 9, is a ridiculous and absurd attempt to confuse and divert the court into believing that the circuit court headed summons and information conformed to the "citation" statute. They never address the relevant arguments in Thatcher's Brief and say nothing about the exhibits attached to Brief which clearly demonstrate that Logan City is indeed a law unto itself. Thatchers' Brief Addendums A pgs. 5 and 6 are proper citation forms carefully drafted to be in accordance with the limitations prescribed in the statutes and are used

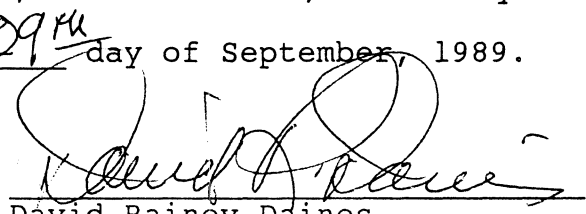
by every law enforcement agency that operates under a citation statute. Logan City, alone claims the right to use false judicial summons-information. This action is in open hostility to the rule of law, limitations in the citation statute; in violation of the false judicial notice, false impersonation statutes, and in hostility to forms used in the same court jurisdiction by overlapping enforcement agencies including the Highway Patrol and Cache County Sheriff's Office. There is no doubt that Logan City has operated in hostility to law in this respect principally because of the improved money extraction potential of these ultra vires practices. The only question left here is whether this appellate court will gloss over or take significant action to halt the operation of this "better system" than the rule of law in popular use in Logan City. It is submitted that the city's continuing use of the false judicial notice against Michael Thatcher and countless others after their default in the Karen Thatcher case is pure and simple contempt of this Utah Court of Appeals by a municipality that considers itself above the law.

Signed this 29th day of September, 1989.


David Rainey Daines

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Reply Brief postage prepaid in Logan, Utah to Cheryl A. Russell, Logan City Prosecutor, 255 North Main, Post Office Box 527, Logan, Utah 84321, attorney for Plaintiff, Respondent this 29th day of September, 1989.


David Rainey Daines

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