

2000

Salt Lake City v. Kenneth R. Larsen : Reply Brief

Utah Court of Appeals

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Kenneth R. Larsen; pro se.

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IN THE UTAH COURT OF APPEALS

<p>SALT LAKE CITY Plaintiff/Appellee,</p> <p>vs.</p> <p>KENNETH R. LARSEN Defendant/Appellant.</p>	<p>APPELLANT'S REPLY BRIEF</p> <p>Case No. 2000-0117 - CA</p> <p>Priority No. 2</p>
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REPLY BRIEF OF THE APPELLANT

Appeal from a conviction and judgment of Cruising in violation of Salt Lake City Ordinance 12.12.090, an infraction, in the Third District Court, Salt Lake Department, State of Utah, the Honorable Robert K. Hilder, Judge, presiding.

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Julia D'Alesandro
Clerk of the Court

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KENNETH R. LARSEN, DEFENDANT AND APPELLANT, by and through himself, pro se, pursuant to the Utah Rules of Appellate Procedure, submits the following REPLY BRIEF in support of this petition for review.

ARGUMENT

I. APPELLEE CLAIMED THAT APPELLANT HAS NOT FULFILLED THE RULES OF PROCEDURE.

Appellee asserted that a transcript is necessary to provide evidentiary support. Although no transcript was presented to Appellee, Appellant asserts that the required transcript was requested in good faith, and Appellant was informed that no such transcript was available.

II. APPELLEE CLAIMED THAT APPELLANT'S ARGUMENTS WERE INADEQUATELY BRIEFED.

Appellee asserted that Appellant's Brief "consists of the same broad, hyperbolic assertions found in Appellant's memoranda at the trial court level." And that, "No authority or legal analysis has been provided." Appellant asserts that his arguments are based on the plain language of the constitutions, and that being the supreme law of the land, they need no authority or legal analysis. Appellee asserted that "Appellant's briefing has resulted in issues before the court that are "too broad and too vague to merit further review or oral argument." Appellant claims that the constitutional principles on which his case is based are sufficiently specific to warrant review. In spite of Appellant's "vague hyperbole" specific arguments were raised that remain unanswered by Appellee. For example, (1) Appellant's constitutional right to a trial by jury, as guaranteed in the state and federal constitutions, (2) the right and duty of a jury to consider the constitutionality of the law and (3) the reasons cited why the Salt Lake City Anti-Cruising law is unconstitutional.

**III. APPELLEE CLAIMED THAT THE CRUISING
ORDINANCE COMPLIES WITH STATE LAW.**

Appellant asserts that no city police powers or state law can violate the state or federal constitutions, the supreme law of the land. All the problems associated with cruising, such as noise, aggression, and unsafe driving are and can be addressed by existing specific laws and ordinances. Salt Lake City has implicitly admitted that the act of driving past a police check point is not a concern for public health, safety or welfare, by failing to cite drivers the first or second time for such an act. None of the concerns raised by the city justifies any violation of the equal constitutional civil rights of cruisers raised by Appellant.

**IV. APPELLEE CLAIMED THAT APPELLANT IS NOT
ENTITLED TO A JURY.**

IF ALL political power is inherent in the people, as stated in the Utah Constitution, **AND**

IF governments derive their just powers from the consent of the governed, as stated in the Declaration of Independence, **AND**

IF the People have expressed their consent and their political will in the constitutions, as stated in the state and national constitutions, **AND**

IF those constitutions are the supreme law of the land as they claim,
AND

IF both the state and national constitutions clearly state that the right to a trial by jury is guaranteed in **ALL** criminal cases,

THEN by what constitutional authority can there be any state law or rule providing an exception for **ANY** reason, including the absence of any possibility of incarceration?

IF ALL judicial officers are required to take an oath to support the Constitutions, as required in both the state and federal constitutions,

THEN how can jurors serve without taking such an oath?

IF jurors take an oath to support the constitutions,

THEN how can they keep that oath when a law before them is clearly unconstitutional in their judgment and they are required to uphold it?

WHO can uphold, invoke or enforce such a limitation of the rights and duties of jurors without violating his or her own oath of office?

**V. APPELLEE CLAIMED THAT THE CRUISING
ORDINANCE MEETS ALL CONSTITUTIONAL
REQUIREMENTS.**

Appellee claimed that “a presumption of constitutionality applies to the decisions of legislative bodies.” If such were the case and a defendant based his defense on the unconstitutionality of the law, then the courts would be required to presume guilt until defendant could prove innocence. Such a presumption would violate the constitutional guarantee of due process of law. (US Constitution, Fifth Amendment, Utah Constitution, Article I, Section 7)

Appellee claimed that the right to freedom of expression is limited to “intent to convey a particularized message through the conduct and a substantial likelihood that the intended message would be understood by those who viewed it.” The State Constitution grants that “all men have the inherent and inalienable right . . . to communicate freely their thoughts and opinions.” (Utah Constitution, Art I, Sec 1.) It does not say, “only in those cases where the particularized message is likely to be received and understood.” Is not a citizen free to shout his opinions in French, though no one in his vicinity understands French?

Appellee claimed that religious freedom is subject to the degree of faith of the adherent. The constitutions make no allowance for such a

restriction, guaranteeing religious freedom to hypocrites as well as sincere believers.

Appellee claimed that cruisers are not an unconstitutional classification of oppressed people. The Fourteenth Amendment forbids any state (or political subdivision thereof) from denying to any individual **PERSON** within its jurisdiction the equal protection of the laws. If there were only one cruiser and his or her equal constitutional protections were violated for the benefit of the majority who found cruising to be offensive, that violation would be unconstitutional.

Appellee claimed that “Appellant’s sole reference to authority on his point VIII is to the United States Supreme Court case, *Chicago v. Morales*.” Appellant claims that the Constitution is the supreme law of the land and that citing the Constitution is a reference to authority -- the highest authority. The Ninth Amendment is sufficient authority for the constitutional right to travel and the constitutional right to the pursuit of happiness, as long as those exercising such rights do not violate the equal rights of others.

Appellee claimed that “the Tenth Amendment is irrelevant in this context.” In support of that claim, Appellee stated that Salt Lake City’s police powers come from the citizens of Utah, acting through their elected state legislators, and that the Cruising Ordinance came from the citizens of

Salt Lake City, acting through their elected representatives. Appellant asserts that the Tenth Amendment guarantee of undelegated powers to the people does not authorize the majority to act together to violate the rights of minorities or individuals until the power to do so has been granted to the majority by a constitutional amendment. If Appellee's logic is accepted, then there is no constitutional protection for minorities against the tyranny of the majority. **IF** Utah has a republican form of government, as guaranteed by Article IV, Section 4 of the US Constitution, and **IF** the principle of the Tenth Amendment, namely that all political power not delegated to the government by the People in their Constitution is reserved to the people, is essential to a republican form of government, **THEN** the Tenth Amendment is, indeed, relevant to this case and the principle contained therein must be observed.

VI. CONCLUSION

Although it has been nearly 200 years since the Supreme Court delegated to itself the authority to interpret the Constitution (*Marbery v Madison*), the People have not ratified an amendment granting the Supreme Court the power to amend the Constitution by interpretation. Silence and indulgence before tyranny is not consent: “[A]ll Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they

are accustomed.” (Declaration of Independence) George Washington, in his farewell address warned against the toleration of such usurpations: “The basis of our political systems is the right of the people to make and to alter their Constitutions of Government. -- But the Constitution which at any time exists, ‘till changed by an explicit and authentic act of the whole people,’ is sacredly obligatory upon all. . . . If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. -- But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.” The constitutions of both the state and national governments clearly require that each government officer take an oath or affirmation to support the Constitution. That oath does not allow an office-holder to uphold opinions of any other authority when, in the mind of the office-holder, those opinions violate the plain language of the constitution. We taught the world at Nuremberg that obedience to the orders of superiors is no excuse for violations of the fundamental law of the land. Thus, when any officer of the government, including jurors and judges, determines that the Supreme Court has misinterpreted the Constitution, that officer’s oath of office requires him or her to reject the unconstitutional ruling of the Court

and uphold the plain language of the Constitution. Appellant appeals to the conscience of all involved to accept the Constitution as the supreme law of the land and to judge the constitutionality of the Salt Lake City Anti-Cruising Ordinance, using the opinions of other courts, including the Supreme Court, as advisory only and not as compulsory when, in clear conscience, upholding the opinion of the court would violate one's personal oath of office.

DATED this 6th day of July, 2000.



KENNETH R. LARSEN, APPELLANT AND DEFENDANT

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of July, 2000, I caused to be mailed a copy of the above and foregoing REPLY BRIEF OF APPELLANT to:

SIMARJIT S. GILL #6389 (Two Copies)
SALT LAKE CITY PROSECUTOR
T. LANGDON FISHER, #5694
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Salt Lake City, Utah 84111

Postage prepaid in the United States Postal Service

by 
KENNETH R. LARSEN