

2002

Utah v. Marc W. Schumacher : Reply Brief

Utah Court of Appeals

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Marc W. Schumacher; Appellant pro se.

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IN THE UTAH COURT OF APPEALS

_____/

STATE OF UTAH,

Plaintiff/Appellee

Case No. 20020478-CA

vs.

MARC W. SCHUMACHER,

Defendant/Appellant

_____ /

APPELLANT'S FIRST RESPONSE BRIEF
and
REQUEST FOR ORAL ARGUMENT

APPEAL FROM THE CIRCUIT COURT OF IRON COUNTY
5th DISTRICT
HON. J. PHILIP EVES, JUDGE

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Appellant, pro se

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FILED
Utah Court of Appeals

NOV - 4 2002

Pauletta Stagg
Clerk of the Court

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Attorney for Appellee

Both of Appellee's arguments are based upon the concept that the stop was reasonable under the 4th Amendment because the information about running the stop sign was "reliable".

Unfortunately, this argument is not at all relevant - reliability may be relevant if the suspected activity were a felony but it is not at all relevant when the suspected activity is a minor traffic infraction.

The reliability of the source of the information used by the arresting officer is not relevant in this case because Utah law is clear (every single case on this point in the State of Utah):

An officer may stop a vehicle for a traffic violation only if he personally observed that traffic violation.

State v. Hansen, 17 P, 3rd 1135; (Utah App. 2000); *Sandy City v. Thorsness*, 778 P. 2nd 1011 (Utah App. 1989); as well as *Lopez*; *Talbot*; *Sierra*; and *Marshall*; cited in Appellant's original brief.

In other words, the arresting officer could not have issued a citation for running the stop sign because he did not see it happen. The entire purpose of the 4th Amendment is to require an officer to have something to investigate before he makes a stop of a citizen.

If the officer could not have issued a citation, there was nothing for him to investigate. **Without something to investigate, allowing an officer to stop a citizen would violate the very purpose of the 4th Amendment.**

This principle is completely ignored by the Appellee, and understandably so - if the Appellee acknowledged that Utah law clearly requires personal observance of a traffic infraction as a predicate to a stop, then Appellee's argument would be empty. After all, each and every case Appellee cites in support of his inapplicable "source reliability" argument involves felonies. After a stop to investigate a felony, an officer can take some action (make an arrest, etc.) if the source of the information leading to the stop is reliable.

However, in this case, reliability is irrelevant - for even if the good Lord Himself told the arresting officer about the failure to stop, the arresting officer could not stop Appellant without violating Utah law because he did not personally observe the traffic infraction.

Further, Appellee will acknowledge that the reason Agent Dunlap did not stop Appellant is because Agent Dunlap was an undercover narcotics officer who did not have the ability to issue citations for running stop signs. That is why he radioed to a Cedar City Police officer about the failure to stop. In this situation, neither one of the officers had the right to stop Appellant.

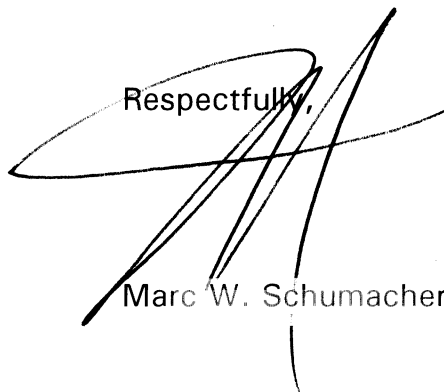
Respectfully,

Marc W. Schumacher

REQUEST FOR ORAL ARGUMENT

Appellant hereby requests oral argument in this matter in the event his Motion for Summary Judgment is denied.

Respectfully,

A handwritten signature in black ink, consisting of several overlapping, sweeping lines that form a stylized, somewhat abstract shape. The signature is positioned to the right of the word "Respectfully," and above the name "Marc W. Schumacher".

Marc W. Schumacher

10-30-02