



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
1501 West Washington - Phoenix Arizona 85007- 3231**

Public Information Office: (602) 542-9310

**WILLIAM H. DICKEY, on his own behalf and as
Guardian ad Litem of minor child WILLIAM
DICKEY; REBECCA CARLSON DICKEY v.
CITY OF FLAGSTAFF. 1 CA-CV 98-0026 (Opinion).**

CV-99-0273-PR

IPetition for review filed: by Jerry L. Smith and Dale Itschner, attorneys for plaintiffs/appellants.

Response filed by: Daniel J. Stoops of Mangum, Wall, Stoops & Warden, representing defendant/appellee City of Flagstaff.

II. ISSUES PRESENTED FOR REVIEW

“First, whether the recreational use statute provided immunity to the City of Flagstaff, even though appellants claimed there was gross negligence on behalf of the City; secondly, whether the City created an attractive nuisance to take the matter out of the statute’s protection and thirdly, the constitutionality of the Recreational Use Statute, in light of the Constitution of the State of Arizona, Article 18, Section 6 which provides: ‘The right of action to recover damages for injuries shall not be abrogated and the amount recovered shall not be subject to any statutory limitation.’”

III. FACTS AND PROCEDURAL BACKGROUND

This is a case in which a ten year boy was crippled in a sledding accident in a Flagstaff park. The boy’s family sued the City of Flagstaff for negligence. The city invoked the protection of the Recreational Use Statute, A.R.S. § 33-1551, which prohibits liability against public or private owners of land used for recreational purposes unless the owner is guilty of wilful, malicious or grossly negligent conduct. Judge Michael Flournoy granted summary judgment to the city. The Court of Appeals affirmed

This Summary was prepared by the Arizona Supreme Court Staff Attorney’s Office and the Administrative Office of the Courts solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.



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**STATE OF ARIZONA v. ROBERT DWIGHT HICKMAN.
1 CA-CR 00-0215 & 1 CA-CR 00-0542 (MD).**

CR-01-0424-PR

Petition for review filed by: AAG Cari McConeghy-Harris.

No response was filed.

I. ISSUE PRESENTED FOR REVIEW

“Should this Court, in light of the recent Supreme Court decision in *United States v. Martinez-Salazar*, 528 U.S. 304 (2000), reconsider and overrule the ‘automatic-reversal’ rule adopted in *State v. Huerta*, 175 Ariz. 262, 855 P.2d 776 (1993)?”

II. SUMMARY

In this case the trial court erred in refusing to dismiss a prospective juror for cause and the defendant used a peremptory challenge to remove the juror. The defendant was convicted and the conviction was reversed by the Court of Appeals under *Huerta*.

In *Huerta*, the Arizona Supreme Court, by a 3-2 majority, held that a defendant is entitled to a new trial if he is forced to use a peremptory challenge to remove a prospective juror who should have been removed for cause by the trial court. In *Martinez-Salazar*, the U.S. Supreme Court held that no federal constitutional right was infringed by the forced use of a peremptory strike to remove a biased juror.

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Thursday, September 26, 2002