



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**CITY OF TUCSON v. CLEAR CHANNEL OUTDOOR, INC.,
CV-04-0033-PR**

PARTIES/COUNSEL:

Petitioner: City of Tucson, represented by Michael D. House, City Attorney, and Frank William Kern III, Principal Assistant City Attorney, and by Paul G. Ulrich.

Defendant: Clear Channel Outdoor, Inc., represented by John F. Munger and Evelyn Patrick Rick of Munger Chadwick, P.L.C.

Amici Curiae: Neighborhood Coalition of Greater Tucson, The Sierra Club, Grand Canyon Chapter, Neighborhood Coalition of Greater Phoenix, N.A.I.L.E.M., and Luz Social Services, represented by Joy E. Herr-Cardillo of the Arizona Center for Law in the Public Interest.

FACTS:

On July 17, 2000, the City of Tucson filed a complaint seeking abatement of 122 nonconforming billboards owned by Clear Channel. (The City later amended its complaint to add another 51 billboards.) At the time the suit was filed, there was no statute of limitations for such enforcement actions. A newly passed statute of limitation took effect, however, the day after this suit was filed, on July 18, 2000. That statute, A.R.S. § 9-462.02(c), states: “A municipality must issue a citation and file an action involving an outdoor advertising use of structure zoning or sign code violation within two years after discovering the violation.” Clear Channel moved for summary judgment, arguing that the City knew of the billboards more than two years before the statute took effect, and that, under the new statute, the City was barred from bringing an enforcement action. The City acknowledged that it had discovered 89 of the alleged violations more than two years prior to filing this suit, but argued that the two-year limitation ran from the effective date of the statute. The trial court granted Clear Channel’s motion for summary judgment as to the 89 billboards the City admitted having known of for more than two years. The Court of Appeals affirmed.

ISSUE:

“Whether the Court of Appeals correctly decided that A.R.S. § 12-505(B), the statute governing application of new statutes of limitations where no period of limitation previously exists, can be applied so that the time to bring existing causes of action is zero and therefore bar any existing causes of action municipalities previously might have had.”

Relevant Statute:

A.R.S. § 12-505 provides:

A. An action barred by pre-existing law is not revived by amendment of such law enlarging the time in which such action may be commenced.

B. If an action is not barred by pre-existing law, the time fixed in an amendment of such law shall govern the limitation of the action.

C. If an amendment of pre-existing law shortens the time of limitation fixed in the pre-existing law so that an action under pre-existing law would be barred when the amendment takes effect, such action may be brought within one year from the time the new law takes effect, and not afterward.

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office 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.



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**CHARLES PHELPS v. FIREBIRD RACEWAY, INC.,
No. CV-04-0114-PR**

PARTIES/COUNSEL:

Petitioner: Plaintiff/appellant Phelps, represented by David L. Abney, of Skousen, Skousen, Gulbrandsen & Patience.

Respondent: Defendant/appellee Firebird Raceway, represented by Jay A. Fradkin and John J. Egbert, of Jennings, Strouss & Salmon.

Amicus curiae: Arizona Trial Lawyers Association, represented by Thomas L. Hudson and Taylor C. Young, of Osborn Maledon, and JoJene E. Mills, of Piccarreta & Davis; the Law Offices of Charles Brewer, represented by Charles M. Brewer, John B. Brewer, and Dane L. Wood.

FACTS:

In order to participate in a drag race at Firebird Raceway, Plaintiff Charles Phelps signed a “Release and Covenant Not to Sue” and a “Release and Waiver of Liability, Assumption or Risk, and Indemnity Agreement.” During the race, Phelps’s car crashed into a wall and was engulfed by fire. He was severely burned. He alleges that Firebird Raceway was negligent in rescuing him and rendering medical aid. In the documents he signed, Phelps expressly recognized that Firebird might be negligent in these respects and he expressly assumed that risk, waived any liability on the part of Firebird, and covenanted not to sue.

The trial court granted summary judgment to Firebird on the basis of the release and waiver. The court of appeals affirmed. The only issue discussed was whether Article 18, § 5 of the Arizona Constitution required the jury to decide whether to apply the written release and waiver.

ISSUE:

Under Article 18, § 5 of the Arizona Constitution are the enforceability and validity of written express assumptions of risk (“releases”) exclusively issues for a jury to decide?

Constitutional provision:

Article 18, § 5 of the Arizona Constitution provides: “The defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact and shall, at all times, be left to the jury.”

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**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. SUDDEN RIO STROUD,
No. CR-04-0234-PR**

PARTIES/COUNSEL:

Petitioner: Plaintiff/appellant State of Arizona, represented by Diane Leigh Hunt, Assistant Attorney General.

Respondent: Defendant/appellee Sudden Rio Stroud, represented by Stacy Taeuber.

FACTS:

Officer Silva knew Stroud and was aware that Stroud had a felony arrest warrant outstanding against him. When Officer Silva saw Stroud getting out of his parked car, he approached Stroud and told him to place his hands on the car. According to Officer Silva, Stroud “made a halfway attempt” to comply and asked why he was being arrested. When Officer Silva told him about the felony arrest warrant, Stroud tried to jump in front of Silva. Silva grabbed Stroud’s shirt collar, leaned him against the car, and held him down. He repeatedly told Stroud he was under arrest. Stroud continued to struggle and kick, attempting to get away. Stroud ignored Silva’s warnings to submit, forcing Silva to use pepper spray. Thereafter, Stroud broke free and fled, and was later apprehended by another officer.

Stroud was tried and convicted by a jury on charges of resisting arrest and escape in the second degree. The jury also found that at the time Stroud committed the offenses he was on probation. The trial court imposed presumptive, consecutive prison terms totaling four years.

On appeal, the court of appeals affirmed Stroud’s conviction and sentence for resisting arrest but vacated his conviction and sentence for escape. It reasoned that the evidence presented at trial did not satisfy the statutory requirements for second degree escape.

ISSUE:

Did the court of appeals err by deciding that the meaning of the statutorily defined term “custody” in the escape statutes differs depending on how a defendant is charged?

Relevant Statutes:

A.R.S. § 13-2501(3) defines “custody,” in relevant part, as the imposition of actual or constructive restraint pursuant to an on-site arrest”

A.R.S. § 13-2501(4) defines “escape” as “departure from custody”

A.R.S. § 13-2503(A)(2) provides that a person commits “escape in the second degree by knowingly . . . [e]scaping or attempting to escape from custody imposed as a result of having been arrested for, charged with or found guilty of a felony”

A.R.S. § 13-3881(A) provides that “[a]n arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest.”

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