



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DONNA JEAN BENNETT,  
CR-05-0533-PR**

**PARTIES AND COUNSEL:**

Petitioner Donna Jean Bennett is represented by Adam N. Bleier, on behalf of the Arizona Justice Project.

Respondent State of Arizona is represented by Taren M. Ellis, Deputy Pima County Attorney.

**FACTS:**

On January 30, 1995, Donna Bennett and her live-in boyfriend, John Sweet, used methamphetamine before Bennett left for work. Bennett left her two-year-old son, Greyson, in Sweet's care. At about midnight, Sweet called Bennett and told her that Greyson had had a seizure after the dogs knocked him over. Bennett did nothing. When she returned home about 2:00 a.m., Greyson awoke and told her his head hurt. A short time later, Bennett called the on-call doctor for her physician's group, who told her to take Greyson to the hospital. Bennett did not do so, however.

In the early morning hours, one of Bennett's co-workers, a paramedic, went to Bennett's home after she paged him. He told Bennett several times that she needed to get Greyson to the hospital. The paramedic later testified that Sweet prevented Bennett from trying to get medical help for her son. When Bennett finally took her son to the hospital about 8:30 a.m., he was non-responsive and was having difficulty breathing. He died about two hours later from severe head injuries.

Bennett was charged with intentional child abuse, first degree murder, and unlawful possession of a dangerous drug. The State contended that Sweet had inflicted the injuries that caused Greyson's death, and that Bennett's culpability was premised on her failure to secure immediate medical attention for Greyson.

The jury convicted Bennett of child abuse and felony murder, and the court sentenced her to life imprisonment. Following the conviction, R. Lamar Couser was appointed to represent Bennett both on appeal and in Rule 32 proceedings. On appeal, he argued that the evidence was insufficient to convict of child abuse and raised a general challenge to denial of her Rule 20 motion for judgment of acquittal. The appeals court affirmed the convictions and sentences.

In May 2002, a second PCR petition was filed, asserting that Couser rendered ineffective assistance on appeal by not challenging sufficiency of the evidence to uphold the felony murder conviction. The trial court summarily denied relief, finding that the issue was raised and finally

adjudicated on appeal, and that it was waived and precluded because it could have been raised in the first Rule 32 proceeding.

The court of appeals subsequently denied review. This court granted Bennett's petition for review.

**ISSUES:**

1. Whether the State proved beyond a reasonable doubt that Bennett's action in accomplishing the underlying felony of child abuse caused the death of the victim so as to sustain a conviction for felony murder.
2. Whether Bennett is precluded from relief from this Court where this claim was not argued on appeal by appellate counsel and appellate counsel was structurally prevented from raising his own ineffectiveness in the initial Rule 32 proceeding.

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