



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**NIKOLAS CROSBY-GARBOTZ v. HON. FELL AND
STATE OF ARIZONA,
CR-18-0050-PR, 244 Ariz. 339 (App. 2017)**

PARTIES:

Petitioner: Nikolas Crosby-Garbotz
Respondent: State of Arizona, Real Party in Interest
Amici Curiae: Arizona Attorneys for Criminal Justice and Arizona Justice Project

FACTS:

Crosby’s daughter C. was born prematurely in February 2016 and remained hospitalized for nearly two weeks. On July 5, 2016, Crosby called 9-1-1 and stated C. was unresponsive and appeared to be having a seizure. At the hospital, doctors determined she had a subdural hematoma (bruising), retinal hemorrhaging (bleeding) in both eyes, and retinoschisis (splitting of the layers in the eye). However, she had no other signs of physical trauma.

The Arizona Department of Child Safety (“DCS”) took temporary custody of C. and filed a dependency petition, alleging that Crosby had abused her under [A.R.S. § 8–201\(2\)](#), and that C. was dependent pursuant to [§ 8–201\(15\)\(a\)\(i\) or \(iii\)](#). The dependency hearing began in November 2016 and ended in February 2017. At the hearing, Crosby testified that since C. was about three months old, she had suffered “recurrent, but intermittent and persistent bouts of irritability and lethargy,” periods of inconsolability, and multiple instances of projectile vomiting. On that morning in July, she had been “crying” and “fussy” and then had a seizure in his arms.

DCS and Crosby each presented two medical experts during the eleven-day hearing. DCS’s experts opined that C.’s injuries arose from non-accidental abuse, most likely “Shaken Baby Syndrome.” Crosby’s experts, on the other hand, opined that C. could not have sustained her injuries only from shaking or without some additional injury. They surmised that, given C.’s medical history, the more likely explanation was that she had a dormant or chronic subdural hematoma, perhaps caused by viral encephalitis (inflammation of the brain from a virus).

In March 2017, the juvenile court concluded that DCS had not sustained “its burden of proving by a preponderance of the evidence that . . . Crosby inflicted physical injury, impairment of body function, or disfigurement to” C. It considered that—based on Crosby’s evidence—it was more likely that C. had a chronic (long-lasting) subdural hematoma that was aggravated when she bumped her head on her crib. The court therefore dismissed the dependency petition.

In December 2016, before the dependency case had concluded, the State charged Crosby with child abuse under [A.R.S. § 13–3623\(A\)\(1\)](#), and the grand jury returned an indictment. After

final judgment in the dependency proceeding, Crosby moved to dismiss the indictment based on collateral estoppel, arguing the State could not relitigate the issue of whether he had abused C. The trial court denied the motion after a hearing. Crosby then filed a special action with the court of appeals

The court of appeals accepted special action jurisdiction and denied relief. The court noted several cases from other jurisdictions in which the courts declined to apply collateral estoppel to bar the State from prosecuting the defendant for child abuse that the State did not prove in a related dependency proceeding. In Crosby's case, the court of appeals found the reasoning in these cases highly persuasive. The court was particularly concerned that permitting the doctrine of collateral estoppel to apply in this context would cause the State to forego dependency proceedings for fear of precluding issues in a future criminal proceeding. This could potentially increase the danger to children. Similarly, the State might be compelled to present its entire criminal case in the dependency proceeding, placing an undue (overly heavy) burden on the juvenile court system. The State could be forced to shift its focus from the best interest of the child to establishing that a criminal act occurred. Based on these policy arguments, the court concluded, a bright-line rule against applying collateral estoppel in this context best serves the litigants, their attorneys, the courts of this State, and the public.

Crosby petitioned for review of the court of appeals decision.

ISSUES:

1. Did the Court of Appeals err by holding that a favorable dependency ruling can never be given preclusive effect in subsequent criminal proceedings?
2. Under the doctrine of collateral estoppel, does the State's failure to prove child abuse by a preponderance of the evidence after an 11-day dependency trial bar the State from attempting to reprove child abuse beyond a reasonable doubt in a subsequent criminal trial?

DEFINITION:

Collateral Estoppel: "The judicial rule of collateral estoppel can be generally stated as follows: When an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Fitzgerald v. Superior Court*, 173 Ariz. 539, 546 (App. 1992).

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