



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**PHOENIX CITY PROSECUTOR V. HON. LOWERY/CLAUDETTE
CRAIG, CV-18-0101-PR**

PARTIES:

Petitioner: Phoenix City Prosecutor
Respondent: Claudette Craig
Amici Curiae: City of Scottsdale
Arizona Attorneys for Criminal Justice

FACTS:

Harry Craig (“Harry”) called the police to say he was concerned that his wife Claudette Craig (“Claudette”) had been drinking and might attempt to drive. Harry then parked one of the couple’s jointly-owned vehicles behind the couple’s van in an effort to keep Claudette from driving. Claudette nevertheless tried to drive by backing the couple’s van into their other vehicle and pushing it about 15 feet before stopping. Harry and the couple’s child witnessed the incident.

When the police arrived, Claudette was out of the van. An officer noted property damage to both the couple’s vehicles. The police cited Claudette with three counts of driving under the influence of alcohol (“DUI”) in violation of [A.R.S. §§ 28-1381\(A\)\(1\)](#) (impaired to slightest degree), -1381(A)(2) (blood alcohol of .08 or more), and -1382(A)(1) (extreme DUI), and one count of criminal damage, a domestic violence offense, [A.R.S. §§ 13-1602](#), -2601(A).

Before the case was set for trial, Claudette filed a Motion to Preclude Testimony of Harry Craig and a Motion to Sever Offenses. The City responded to both motions, arguing that Harry was a victim of Claudette’s criminal conduct for all charges and therefore, an exception to the anti-marital fact privilege should apply to all charges as provided by [A.R.S. § 13-4062\(1\)](#) (privilege inapplicable “in a criminal action or proceeding for a crime committed by the husband against the wife, or by a wife against the husband”). Claudette eventually conceded that, under the statutory exception, one of the charges, the alleged criminal damage offense, was committed “against” Harry and therefore he could be called as a witness to testify about that charge.

The Phoenix Municipal Court, Judge Laura Lowery, granted both of Claudette’s motions, deeming the anti-marital fact privilege applicable in the DUI prosecution—meaning that Harry could not testify about those offenses—and severing the criminal damage count from the DUI counts.

In November 2016 the Phoenix City Prosecutor (“the City”) filed a petition for special action in Maricopa County Superior Court, challenging both rulings. The Superior Court denied relief and remanded the case to the Municipal Court. However, the City filed an appeal of the

Superior Court's rulings. The Court of Appeals granted a stay of proceedings in the Municipal Court pending its decision.

In March 2018 the Court of Appeals issued an opinion upholding Claudette's contention that the anti-marital fact privilege was applicable to the DUI prosecution and shielded Claudette from testimony by Harry. On a technical issue of jurisdiction, the Court of Appeals determined that the City's appeal sought relief from what appeared to be a non-final order of the Superior Court in a special action, [A.R.S § 12-2101\(A\)\(1\)](#), [State v. Chopra, 241 Ariz. 353, 355 ¶ 8 \(App. 2016\)](#), and [State v. Bayardi, 230 Ariz. 195, 197 n. 4 ¶ 7 \(App. 2012\)](#), and therefore the appeal should also be treated as a special action (rather than an appeal).

The City filed a Petition for Review in this Court and moved for a stay of the Municipal Court proceedings. After considering Claudette's response to the stay motion, the Court issued a stay.

ISSUES:

I. "[Arizona Revised Statutes § 13-4062\(1\)](#) bars the testimony of one spouse against the other 'as to events occurring during the marriage,' except in a criminal case where one spouse committed a crime against the other. Here, a husband was a victim of his wife's criminal offenses—DUI and criminal damage. The trial court nevertheless precluded the husband's testimony in the DUI case. The superior court denied the State relief in a special action proceeding. The court of appeals affirmed the superior court's determination. Was this error?"

II. "Offenses may be joined together if based on the same conduct. The evidence in this matter will show that, while impaired by alcohol, [Claudette] drove one vehicle that she owned jointly with her husband into another jointly-owned vehicle. The trial court severed the criminal damage offense from the DUI offenses, finding that the husband could testify only in the criminal damage case. The superior court denied special action relief. The court of appeals affirmed the superior court's determination. Was this error?"

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