

Jeremy Nichols Acquitted By NM Supreme Court Of Permitting Neglect In Death Of Infant Son

On November 19, 2015 the New Mexico Supreme Court [overturned the conviction](#) of Jeremy Nichols and acquitted him based on the prosecution's failure to introduce any evidence he was guilty of permitting neglect that resulted in great bodily harm or the death of his six-month-old son Kaden Nichols.

Nichols' wife Alycia Nichols gave birth to Kaden and his twin brother Bryce in September 2005. Due to medical complications from the boys being born six weeks premature, Kaden was hospitalized for six weeks, and Bryce for eight weeks, in the neonatal intensive care unit (NICU) at Presbyterian Hospital in Albuquerque.

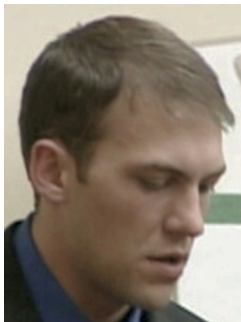
Kaden and Bryce were seen by doctors a number of times related to various health problems during the months following their discharge from NICU.

On the morning of March 16, 2006 Nichols watched the boys when Alycia left about 9 a.m. to run some errands. Nichols feed the babies cereal, and while Bryce ate, Kaden would not eat and blew food out of his mouth. Nichols later said it appeared Kaden was hungry but just could not swallow the food. When Alycia returned home, Bryce was napping but Kaden was fussy and Nichols was holding him. Nichols and Alycia fed the babies about noon, and she left at 12:45 for a hair appointment.

Nichols put on a movie and sat with Kaden on the couch. Kaden was going "in and out" between being content and being fussy. Nichols thought Kaden might be hungry so he tried to feed him with a bottle, but he drank very little.

After finishing with her hair appointment, Alycia called Nichols to ask if she needed to go the store. She heard crying in the background, and Nichols told her the boys were acting fussy and asked her to come straight home.

When she arrived about 3:15 p.m. Kaden's legs seemed "ashy" and he appeared lethargic. She took his temperature, that was about 95, and she gave him a "baby Tylenol." A few minutes later Nichols and Alycia retook Kaden's temperature and it was 95.7. Alycia called her aunt, a pediatric



Jeremy Nichols during his trial in 2010

nurse, for advice. While on the phone Alycia said that Kaden's breathing was becoming light and his legs were getting more discolored. Her aunt advised calling 911.

Nichols began giving infant CPR to Kaden and Alycia called 911 at 3:39 p.m. When paramedics arrived eight minutes later Kaden was unconscious and not breathing on his own. The paramedics transported Kaden to the Lovelace West Mesa Medical Center. Kaden never regained consciousness and at 4:47 p.m. he was pronounced dead.

Kaden's autopsy determined his cause of death was loss of blood associated with blunt abdominal trauma and a lacerated liver.

Bryce was also transported to Lovelace Medical Center on March 16. Bryce's "vitals were fine" and his temperature and his elevated heart rate was attributed to the commotion. CT films taken that day revealed fluid around his liver indicating a mild liver injury.

Albuquerque Police Department detectives were assigned to conduct an investigation because Kaden's death was considered possibly suspicious. Nichols, Alycia, and medical personnel who attended to Kaden and Bryce were interviewed. On March 17, 2006, the day after Kaden died, Nichols was arrested and charged with multiple counts of first-degree felony child abuse.

After 46 days in custody Nichols was released on \$80,000 bail. More than four years later, his trial began in April 2010. During his three week trial the prosecution's case was based on their contention Nichols placed Kaden in a situation that endangered his life and caused his death and caused him great bodily harm.

On May 5, 2010 the [jury acquitted Nichols](#) of four charges related to him causing or permitting Kaden's fatal injuries or that Nichols *caused* endangerment by medical neglect. The jury convicted Nichols of the sole charge of negligently *permitting* endangerment to Kaden by medical neglect resulting in his death or great bodily harm. That charge was based on the prosecution's theory Nichols did not inflict any injury, but he did not provide or obtain necessary

medical care for Kaden. Nichols remained free on bond pending his sentencing.

The judge [sentenced Nichols](#) on July 13, 2010 to 18 years imprisonment. However, the judge ruled that Nichols wasn't a flight risk or a danger to the community, so he allowed him to remain free on \$200,000 bail pending the outcome of his appeal.

On December 20, 2013 the New Mexico Court of Appeals [affirmed Nichols conviction](#) and sentence.

The New Mexico Supreme Court granted review of Nichols conviction. Nichols argued the prosecution introduced insufficient evidence to prove beyond a reasonable doubt that he did not provide or obtain necessary medical care for his son.

On November 19, 2005 -- almost ten years after he was charged -- the Supreme Court issued its unanimous ruling reversing Nichols conviction on the basis there was insufficient evidence for the jury to find him guilty. In *State v. Nichols*, No. S-1-SC-34549 (NM Sup. Ct. 11/19/2015) [the Court stated](#):

Our review of the record demonstrates that the State did not prove, and indeed presented no evidence to prove, an essential element in the crime—that Jeremy's alleged endangerment by medical neglect actually caused Kaden's death. The State also failed to prove that Jeremy acted "with reckless disregard." For those reasons, his conviction must be reversed and the charges vacated.

... In this case, the State was required to put forth substantial evidence that Jeremy's neglect "resulted in" Kaden's death or great bodily harm, meaning that medical neglect was at least a significant cause of his death or great bodily injury. ... But the State never offered any such evidence.

... Clearly, a suggestion that "maybe" or "perhaps" something would or would not have happened, even if based on evidence, is not probative of anything.

... We cannot write an opinion saying that an infant's fussiness and lack of appetite are of such moment that a parent's failure to call 911 might put him in jail for felony child abuse. ... Based on this record, we cannot say with any degree of confidence what evidence would have put Jeremy on notice of Kaden's critical need of medical care, in light of the jury's finding that Jeremy did not

Nichols cont. on page 10

Gary Alan Mauz Exonerated Of Disorderly Conduct For Calling Neighbor A “Whore”

On June 23, 2015 a three-judge panel of the Pennsylvania Superior Court [overturned the disorderly conduct conviction](#) of Gary Alan Mauz for calling his neighbor a “whore,” and making other derogatory comments to her. The appeals court [noted that](#), “We find Appellant’s comments reprehensible but not criminal.”

At about 10 p.m. on April 24, 2013 Victoria Battistini was in the backyard of her home in Warrington, Pennsylvania when she saw from a street light that her neighbor Mauz was standing at the front door of his home. Battistini had a fenced backyard and Mauz’ house was diagonal from her house.

Battistini heard Mauz directing comments toward her that included, her “fat mom humps [her] dog,” and “whore.” The two were separated by Battistini’s backyard fence and they were not physically close to each other.

The next day Battistini called the police, reporting that Mauz’ comments made her feel “uncomfortable and scared.” The officer that responded cited Mauz for misdemeanor disorderly conduct on the basis he used obscene language towards Battistini,

and he had created a hazardous or physically offensive condition for her.

Mauz had a bench trial during which the prosecution’s only witnesses were Battistini and the investigating officer. Mauz was found guilty on June 20, 2014 of disorderly conduct for making a hazardous or physically offensive condition under 18 Pa.C.S.A. § 5503(a)(4). He was fined \$50 and ordered to pay court costs.

Mauz appealed, arguing the State introduced insufficient evidence to sustain his disorderly conduct conviction.

The Pennsylvania Superior Court’s [unanimous ruling](#) on September 9, 2015 acquitted Mauz of his disorderly conduct conviction. The Court’s ruling in *Commonwealth of Pennsylvania vs. Gary Alan Mauz*, 122 A.3d 1039, 2015 PA Super 191 (Superior Court of Pennsylvania, 6-23 2014) [states in part](#):

Appellant argues the Commonwealth produced insufficient evidence to sustain a conviction under § 5503(a)(4).

“The offense of disorderly conduct is not intended as a catchall for every act which annoys or disturbs people; it is not to be used as a dragnet for all the irritations which breed in the ferment of a community.” ... “It has a specific purpose; it has a definite objective, it is intended to preserve the **public peace**.”

Nichols cont. from page 9

inflict the injuries that resulted in Kaden’s death.

... the jury found that Jeremy was “wholly indifferent” and “reckless” for not seeking medical care, a verdict altogether unsupported by substantial evidence in the record. We cannot sustain any verdict on that basis.

We reverse Jeremy Nichols’ child abuse conviction under Section 30-6-1 and order that the charge be dismissed with prejudice.

Nichols cannot be retried since the supreme court found there was insufficient evidence and ordered dismissal of the charge.

After the court’s ruling Nichols’ attorney Raymond Maestas [issued a statement](#) to the press: “Jeremy Nichols is an innocent person, who was wrongfully accused by the Albuquerque Police Department, the Office of the Medical Investigator, and the District Attor-

ney’s Office in a rush to judgment fueled by emotion rather than actual evidence – the very agencies whose job it is to do a full and fair investigation. He is and always was a great father, and everyone the police interviewed during their investigation said so.”

After Nichols was charged his wife Alycia divorced him and remarried. Nichols and Alycia’s son Bryce is reported to be a healthy youngster.

[Click here to read](#) the New Mexico Supreme Court’s ruling in *State v. Nichols*, No. S-1-SC-34549 (NM Sup. Ct. 11-19-2015).

Source: [State v. Nichols](#), No. S-1-SC-34549 (NM Sup. Ct. 11-19-2015)

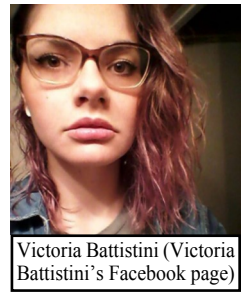
[After 9 years](#), dad is exonerated in death of twin son, Albuquerque Journal ((Albuquerque, NM) November 23, 2015

[Verdict Reached In Nichols Case](#), KOAT-TV (Albuquerque, NM), May 5, 2010

[Nichols Gets 18 Years in Child Abuse Case](#), Albuquerque Journal, July 14, 2010

[State v. Nichols](#), No. 30,783 (NM Ct. of Appeals, 12-20-2015)

We concluded the defendant’s action did not jeopardize “the public peace.” In making statements that were “briefly irritating”, the defendant did not commit disorderly conduct.



Victoria Battistini (Victoria Battistini’s Facebook page)

... we believe the evidence is insufficient to establish that Appellant acted with the intent to cause **public** annoyance, inconvenience or alarm.

Furthermore, we do not believe Appellant recklessly created a risk of a hazardous or physically offensive condition under § 5503(a)(4). ... Here, Appellant made a few brief, offensive remarks to Battistini and then retreated into his home. The two were separated by a fence, and the record fails to reflect that anyone else heard Appellant’s statements.

We also do not believe Appellant’s conduct created a physically offensive condition ... Appellant [] did not invade Battistini’s physical privacy, as the encounter occurred when she was present in her yard and visible to Appellant from his own yard.

For all of the foregoing reasons, we conclude the record ... does not contain sufficient evidence to support Appellant’s conviction under § 5503(a)(4). We therefore vacate the judgment of sentence. (Note: The words in bold are in the judge’s opinion)

Mauz’ retrial is barred by double jeopardy.

[Click here to read the ruling](#) exonerating Gary Mauz in *Commonwealth of Pennsylvania vs. Gary Alan Mauz*, 122 A.3d 1039, 2015 PA Super 191 (Superior Court of Penn., 6-23-2014).

Source:

[Commonwealth of Pennsylvania vs. Gary Alan Mauz](#), 122 A.3d 1039, 2015 PA Super 191 (Superior Court of Pennsylvania, 6-23-2014)

[Pennsylvania judge vacates disorderly conduct conviction](#) of man who called neighbor a ‘whore’, *New York Daily News*, June 24, 2015

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