



Supreme Court of Georgia
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SUMMARIES OF OPINIONS
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CALLOWAY V. THE STATE (S17A2019)

The Supreme Court of Georgia has reversed the murder conviction of a woman whose 15-month-old baby son died months after he was burned in an apartment fire that erupted while the baby's father was cooking methamphetamine.

In today's opinion, **Justice Nels S.D. Peterson** writes that under state law, because she already had been convicted in federal court of several crimes related to manufacturing meth, **Suzzette Marie Calloway** could not be prosecuted subsequently in state court for felony murder involving the same conduct.

"We conclude that the evidence was sufficient to support the jury's verdicts, but Calloway's federal conviction for attempt to manufacture meth barred a successive prosecution for the state crime of felony murder predicated on [i.e. based on] manufacturing meth," today's unanimous opinion says. "We therefore reverse her felony murder conviction...."

According to the facts in both federal court and **Catoosa County** Superior Court, Calloway and her husband, Christopher Hicks, had two children, 15-month old Chelton and an older son. Hicks manufactured and sold meth with the assistance of Calloway, who also sold the drug and purchased supplies, including pseudoephedrine tablets. Lance and Connie Rockholt were friends with the couple and often came to their apartment to smoke meth, supplied by Hicks. Lance later testified that the equipment and ingredients to make meth were located throughout the couple's apartment.

The night of Feb. 17, 2001, the Rockholts visited Calloway and Hicks in their apartment. When they arrived, Calloway was in the kitchen cooking hot dogs while Hicks was in the back room cooking meth. Connie Rockholt made a bottle for Chelton, then took him to his bedroom

where she gave him the bottle and laid him down for the night. Her husband, meanwhile, watched television in the living room with the older child. At some point, Hicks came out of the back room holding a “little flask of dope” and went into the kitchen. Hicks returned to the living room carrying a coffee pot of clear liquid, stating that he had “over gassed his dope.” Hicks retrieved a propane burner from the back room and set it on the coffee table in front of where Lance and his son were watching TV. He then began to heat the coffee pot, which was filled with methamphetamine. But the vapors from the coffee pot caught fire, and the liquid inside erupted in a flame, melting the plastic handle held by Hicks. Hicks dropped the flaming coffee pot, igniting the living room. Everyone but Chelton, who was asleep in his room, escaped. Once outside, Calloway realized Chelton was still inside. The group unsuccessfully tried placing a ladder next to Chelton’s bedroom several times before Hicks was able to enter the room and retrieve Chelton. The baby was badly burned on his face, scalp, arms and leg. Calloway and Hicks left immediately for the hospital with Chelton.

At the hospital, Calloway and Hicks told a state fire investigator that a wall heater had exploded and caught fire. Investigators later inspected the apartment but found evidence inconsistent with the couple’s account of the fire. Instead they found unnatural burn patterns and numerous items used in making methamphetamine, including pseudoephedrine pill bottles, latex gloves, coffee filters and fuel and propane cans. While Chelton was still in the hospital, he and the couple’s older son were placed in the custody of the Department of Family and Children Services. Chelton meanwhile was flown to the Shriner’s Burn Institute in Cincinnati, OH. The baby’s burns covered 30 percent of his body, and he underwent 10 surgeries to receive skin grafting. Doctors also had to perform a tracheostomy and install a trach tube due to the damage to his airway from inhaling so much hot air. He was eventually placed with a foster care mother in Georgia who was trained in caring for medically fragile children. But after a doctor changed his trach tube during a routine visit, Chelton quit breathing and suffered brain damage. The child welfare agency contacted Calloway and Hicks, and they gave their consent to withdraw care. On June 17, 2001, the baby died.

A detective attended the funeral, planning to take the couple into custody following the service on felony murder charges. But Calloway and Hicks did not attend the funeral, fleeing to Kentucky instead. In July 2001, local law enforcement received a tip that Calloway was spotted at a Walmart in Kentucky buying pseudoephedrine pills. Police officers followed her and when she began driving erratically, stopped her. She appeared to be under the influence of meth and was arrested. A search of her vehicle revealed numerous items used to make meth.

In January 2002, a federal district court indicted Calloway for conspiracy to manufacture meth, attempt to manufacture meth, and creating a substantial risk of harm during the attempted manufacture of meth. In December 2002, she was convicted of her federal charges and sentenced to 20 years in prison. About the same time she was indicted in federal court, a Catoosa County grand jury also indicted her for felony murder “predicated on” – or based on – manufacturing meth and three drug offenses. (Hicks was also indicted and ultimately convicted of murder and meth charges. He remains in prison under a life sentence.) Prior to her February 2004 trial, Calloway filed a motion arguing that the state charges were barred by her constitutional protection from double jeopardy. The trial court denied her motion and in February 2004, the jury found her guilty of felony murder predicated on manufacturing meth. She was sentenced to

life plus 30 years in prison to run consecutively to her federal sentence. Calloway then appealed to the state Supreme Court.

In today's 20-page opinion, the high court rejects Calloway's argument that the evidence against her was insufficient to support the jury's verdict. "Based on the foregoing, the evidence was more than sufficient to support the jury's finding that Calloway was guilty of felony murder, manufacturing meth, possession of meth with intent to distribute, and simple possession," the opinion says. However, Calloway also argued that the State was barred from prosecuting her under the double jeopardy provisions of Georgia Code § 16-1-8 (c) because she already had been convicted of federal crimes stemming from the same conduct. The statute says: "A prosecution is barred if the accused was formerly prosecuted in a district court of the United States for a crime which is within the concurrent jurisdiction of this state if such former prosecution resulted in either a conviction or an acquittal and the subsequent prosecution is for the same conduct...." In response to that argument, "We agree as to some of the state charges," the opinion says.

"Here, the state and federal prosecutions were for crimes that arose from the same underlying conduct that occurred in Catoosa County on February 17, 2001," the opinion says. "Therefore, the State's prosecution for felony murder would be barred unless the felony murder count and the federal crimes required proof of facts not required by the other."

However, "The State's prosecution of possession with intent to distribute, and the federal charges of attempt or conspiracy to manufacture meth or creating a substantial risk of harm during the attempted manufacture of meth, required proof of different elements," the opinion says. "Therefore, the State's prosecution for possession with intent to distribute was not barred by § 16-1-8 (c). We therefore remand for resentencing on this unmerged count."

Attorney for Appellant (Calloway): Jennifer Hildebrand

Attorneys for Appellee (State): Herbert "Buzz" Franklin, District Attorney, Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Scott Teague, Asst. A.G.

BROWN V. THE STATE (S17A1582)

A man convicted of shooting and killing one man and wounding another has had his convictions reversed under an opinion today by the Georgia Supreme Court.

In today's unanimous decision, written by **Justice Carol Hunstein**, the high court has ruled that the **Athens-Clarke County** court erred in allowing the jury to hear evidence of violent crimes for which the man was previously convicted.

"Because we find that the trial court committed reversible error by admitting Brown's other acts evidence, we reverse," the opinion says. ("Other acts evidence" is a legal term for a more stringent standard under the new Evidence Code than what was previously known as "similar transaction evidence.")

According to the facts at trial, **Melvin Brown, Jr.** attended a Super Bowl party on Feb. 2, 2014 at the home of Javious Tucker's father. Others at the party included Tucker and Cyntrelis Boggs. At some point during the party, Brown and Tucker began to argue over Brown's refusal to share a small bag of pork skins. The two began swearing and shoving each other with Brown's uncle eventually separating the two. Brown's uncle then walked Brown down the road, which went down a very steep hill, hoping to calm Brown down. Meanwhile, Tucker and Boggs followed in Tucker's car, driving down the hill toward Brown. Tucker and Brown resumed their argument, with Brown tugging on the driver's side door handle and Tucker getting out of the car

and waving a tire iron. After more cursing and threats, Brown and his uncle walked quickly back up the hill. Boggs encouraged Tucker to drop the argument and leave the neighborhood but Tucker instead started to drive back up the hill after Brown. At the crest of the hill, Brown reached into his car, retrieved a pistol and cocked it. Brown's uncle later testified that he heard his nephew say that he believed Tucker was "fixing to get a gun." Boggs, who was in the car with Tucker, testified that when the shooting began, he was blinded by the sun and could not see or identify the shooter. The physical evidence at the scene, however, suggested that Brown walked back toward Tucker's approaching car and, while walking around the car, fired multiple shots. Brown then fled the scene in his white Oldsmobile sedan. When law enforcement arrived, they found Tucker splayed out in the car, with the bottom half of his body still in the front seat, and the other half in the back seat, as if he had been trying to crawl over the seat into the back seat to avoid the gunfire. Officers recovered a loaded Charter Arms .38 caliber pistol underneath the driver's side floor mat of Tucker's car. It had not been fired. In total, Brown fired nine shots into the vehicle; he struck Tucker seven times and hit Boggs once. Tucker died at the scene from his gunshot wounds; Boggs was taken to the hospital for treatment of an abdominal wound and survived.

During the investigation, tests showed that all the shots had been fired from a Smith & Wesson .40 caliber handgun. Investigators learned that prior to the shooting, Brown's brother had bought such a gun at a pawn shop and kept it hidden under his mattress. The evidence at trial established that Brown often visited his brother and knew about his recent purchase of the gun. When officers later searched his brother's home, the gun was gone. Brown's car was found abandoned in the woods the day after the shooting. With the help of a confidential informant, police eventually found Brown at an apartment complex in Gwinnett County and arrested him.

An Athens-Clarke County grand jury indicted Brown in April 2014 for malice murder, felony murder, aggravated assault, terroristic acts, possession of a firearm by a convicted felon, and possession of a firearm during commission of a crime. Prior to trial, State prosecutors filed a notice of intent to introduce "other acts evidence," and a hearing was held on the matter. Specifically, the other acts evidence was Brown's guilty pleas to being the gunman in two separate shootings in late 2005. At the hearing on the other acts evidence, the State argued that the shootings were admissible under the law to show proof of "motive, intent, plan, identity, and absence of misstate or accident." For other acts evidence to be admissible, the State must show that: 1) the other acts evidence is relevant to an issue other than the defendant's character; 2) the "probative value" (i.e. tending to prove or disprove something) is not substantially outweighed by its "prejudice" (i.e. damage to the defendant's case); and 3) there is sufficient proof for the jury to find that the defendant committed the act. Following the hearing, the trial court ruled that the other acts evidence was admissible to show intent, absence of mistake or accident, and plan. The judge concluded that the probative value of the other acts evidence was not substantially outweighed by undue prejudice. Following an August 2014 trial, the jury found Brown guilty on all counts and he was sentenced to life in prison with no chance of parole plus 65 years. He then appealed to the Georgia Supreme Court, arguing in part that the admission of the other acts evidence at his trial was error.

"We agree," today's opinion says. "Here, Brown did not claim that the shooting was the result of an accident or mistake. Instead, defense counsel argued in his closing remarks that Brown's actions were justified, claiming that Brown shot the victims in self-defense; thus,

whether his actions were the result of an accident or mistake was irrelevant.” It was therefore error for the trial court to admit the 2006 guilty pleas on that ground. Furthermore, “we conclude that the trial court abused its discretion by admitting the...evidence because the prior aggravated assaults were clearly more prejudicial than probative.” As the Eleventh Circuit Court of Appeals explained, “One of the dangers inherent in the admission of extrinsic offense evidence is that the jury may convict the defendant not for the offense charged but for the extrinsic offense” because “the jury may feel that the defendant should be punished for that activity even if he is not guilty of the offense charged.”

“Here, in light of Brown’s self-defense claim, the probative value of the other acts evidence was extremely low at best,” the opinion says. “The fact that [Brown] had committed an assault on another person...[nine] years earlier had nothing to do with his reason for...shooting the victim,” and “really has no purpose other than to show [Brown’s] propensity toward violence.” In fact, “the State had other admissible evidence available to rebut Brown’s self-defense claim without the introduction of the prior aggravated assaults.”

Also Brown’s 2006 convictions of aggravated assault “did not tend to establish a larger goal, nor were they so connected with the crime charged that the murder could not be fully shown without proving the prior assaults,” the opinion says. “Finally, they were not relevant to the ultimate issue in the case – i.e. whether he acted in self-defense. Instead, the other acts evidence primarily established one thing – Brown’s propensity toward violence....”

The evidence underlying Brown’s guilt “is not overwhelming,” the opinion says. There were no eyewitnesses to the shooting other than Brown, and “while the forensic evidence indicates Brown took steps toward and shot into the car multiple times, there is ample conflicting evidence concerning whether he acted in self-defense.”

“In light of the entirety of the evidence presented at trial, we cannot say that it is highly probable that the error did not contribute to the verdict. Accordingly, we must reverse Brown’s convictions.” There is nothing in today’s opinion that prevents the State from retrying Brown.

Attorney for Appellant (Brown): David Williams, Public Defender Office

Attorneys for Appellee (State): Kenneth Mauldin, District Attorney, David Lock, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Scott Teague, Asst. A.G.

TAYLOR V. THE STATE (S17G0501)

Under an opinion today by the Georgia Supreme Court, a **Gwinnett County** man convicted of sexually molesting 16 children has lost his appeal in which he argued that the search warrant used to collect evidence from his computer was invalid and the evidence should have been suppressed.

In today’s unanimous opinion, **Chief Justice P. Harris Hines** writes that although an application for a search warrant may not specifically say that the residence to be searched is the residence of the suspect, the affidavit in support of the application “may be sufficient to connect the suspect to the residence based on inferences that can be drawn from the affidavit.”

“Here, the affidavit was sufficient to establish that connection,” the opinion says.

According to state prosecutors, **Harry Brett Taylor** sexually molested 16 children. Each child’s ordeal is detailed in briefs filed by the Gwinnett County District Attorney. Most of the children were 8 or 9 years old when the abuse began, although some were as young as 6. The

accounts are graphic: “Appellant [i.e. Taylor] began molesting C.T. when C.T. was between 8 and 9 years old and continued to do so until C.T. was between 12 and 13 years old,” according to briefs filed by the State. “Appellant had C.T. insert his penis into Appellant’s anus on three to four occasions, Appellant attempted to insert his own penis into C.T.’s anus, Appellant performed oral sex on C.T., Appellant had C.T. perform oral sex on him, and Appellant had C.T. touch Appellant’s penis. When Appellant attempted to insert his own penis into C.T.’s anus, C.T. stated his anal cavity was too small for Appellant’s penis. These acts comprised Counts One through Six of the Indictment.”

In a number of the incidents, Taylor photographed the children nude.

Taylor was arrested on July 24, 2008. The same day, a detective with the Gwinnett County Police Department applied for, and obtained, a search warrant for Taylor’s home. Although the affidavit in support of the application stated that the search would be conducted at 1751 Bergen Court in Lawrenceville, GA, it did not specifically say that the address was Taylor’s.

The warrant authorized the search at 1751 Bergen Court of cameras, computers, and electronic storage devices for evidence of child molestation and sexual battery. In 2009, Taylor was indicted for 32 sex crimes against the children. In 2013, his attorney filed a motion to suppress the evidence obtained by the search warrant. In the motion, Taylor contended that the affidavit did not contain facts to establish that “the Taylor residence” was located at 1751 Bergen Court, and without that information, the magistrate judge had no basis for concluding that evidence of the crimes could be found at that address. Therefore, the judge did not have probable cause to issue a warrant for the search of 1751 Bergen Court, Taylor argued. The trial court denied the motion, ruling that since the affidavit included a specific address, “the issuing Magistrate Judge had a substantial basis for concluding that a sufficient nexus, or connection, between the items sought and the place to be searched, existed...”

Following a 2014 bench trial (before a judge with no jury), the judge found Taylor guilty of Aggravated Child Molestation (six counts), Aggravated Sexual Battery, Child Molestation (11 counts), Criminal Attempt to Commit Aggravated Child Molestation, Sexual Exploitation of Children (11 counts) and Sexual Battery. Taylor was sentenced to two consecutive life prison terms plus 10 years. Taylor appealed to the Georgia Court of Appeals, and in October 2016, the intermediate appellate court upheld his convictions. Although it found “no Georgia case addressing a similar alleged deficiency in a warrant application,” the Court of Appeals relied on other courts in adopting a rule that “when the affidavit describes only one place connected to the suspect...and lists a specific address to be searched, a connection between the address described where evidence can be found and the probable cause outlined in the affidavit ‘is the only logical conclusion supported by a common-sense reading of the affidavit.’” Based on this rule, the Court of Appeals concluded that the affidavit and an attachment were sufficient to establish that 1751 Bergen Court was where Taylor lived and where the incriminating evidence could be found. Taylor then appealed to the Georgia Supreme Court, which agreed to review the case to answer this question: Whether an affidavit in support of an application for a warrant, that does not say that the residence to be searched is the suspect’s residence, may still be sufficient to support the connection based on inferences that can be drawn from the affidavit, and therefore establish a nexus between the place to be searched and the suspected criminal activity.

In today's opinion, the high court concludes that "an affidavit may be sufficient to connect the suspect to the residence based on inferences that can be drawn from the affidavit" and that in this case, given all the circumstances of the affidavit and its attachment, "the magistrate could easily have inferred a connection between Taylor and the residence at 1751 Bergen Court." Because of this nexus that the magistrate could infer between Taylor and the address, the Supreme Court says that this is not a case, like the Georgia Court of Appeals described, in which the magistrate had to make his probable cause determination based only on "one place connected to the suspect, such as a residence" and the listing of "a specific address to be searched." According to the Supreme Court, the Court of Appeals reached the right result here, but "the rule it adopted was unnecessarily broad for this case."

Attorney for Appellant (Taylor): Bernard Brody

Attorneys for Appellee (State): Daniel Porter, District Attorney, Lee Tittsworth, Asst. D.A.

BLACH V. DIAZ-VERSON (S17Q1508)

The state Supreme Court has ruled that under Georgia's new garnishment statute, an insurance company is only considered a "financial institution" if the garnishment seeks to garnish a defendant's fund or account, as opposed to his wages as the insurance company's employee.

In today's unanimous opinion, written by **Justice Michael P. Boggs**, the high court concludes "that an insurance company is not a 'financial institution' for purposes of Georgia Code § 18-4-4 (c) (2) when the insurance company is garnished based on earnings that it owes the defendant as the defendant's employer."

According to the facts of the case, **Harold Blach** filed a garnishment action against AFLAC, Inc. in December 2015 to collect a \$158,343.40 judgment that he obtained in an Alabama federal court against **Sal Diaz-Verson**. Blach had the judgment registered in the U.S. District Court of the Middle District of Georgia. When Blach did not receive the money, he sought to garnish the bi-monthly retirement benefit payments that AFLAC, an insurance company, pays to Diaz-Verson, its former employee. The federal court ruled that under Georgia's garnishment statute at the time, AFLAC's payments to Diaz-Verson were not exempt from garnishment. The court also ruled that a continuing garnishment would be improper because Diaz-Verson is no longer an employee. Consequently Blach has been filing a new garnishment about once a month and in response, AFLAC has deposited more than \$140,000 into the court's registry to satisfy the judgment against Diaz-Verson.

On May 12, 2016, however, the Georgia legislature enacted a new chapter governing garnishments in this state. The statute amended the old statute in response to a ruling by the late U.S. District Judge Marvin Shoob, who held that Georgia's garnishment statute was unconstitutional on due process grounds because it: 1) failed to require notice of exemptions available; 2) failed to inform debtors of procedures for claiming an exemption; and 3) failed to provide a prompt procedure for resolving exemption claims. Shortly after entering the order, Judge Shoob limited his ruling "to garnishment actions filed against a financial institution holding a judgment debtor's property under a deposit agreement or account." Shoob's final order did not apply to the garnishment of employee wages and earnings. At the next session of the Georgia General Assembly, legislators enacted the new garnishment statute "to modernize, reorganize, and provide constitutional protections in garnishment proceedings" and "to provide

for procedures only applicable to financial institutions.” Relevant to this case, the Georgia legislature substantially shortened the garnishment period for garnishments against a “financial institution.” The former statute provided for a 30-to-45 day garnishment period for all garnishments. The new statute provides that garnishments against “financial institutions” may last only for five days. All other garnishments against nonfinancial institutions have a 29-day garnishment period. As a result of the new statute, separate forms became available for garnishments that involved financial institutions and garnishments that involved nonfinancial institutions.

The new statute defines “financial institution” as: “every federal or state chartered commercial or savings bank, including savings and loan associations and cooperative banks, federal or state chartered credit unions, benefit associations, **insurance companies**, safe-deposit companies, trust companies, any money market mutual fund, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.”

After the new statute went into effect, Blach used the “nonfinancial institution” garnishment form, and AFLAC followed the instructions on the form and garnished payments to Diaz-Verson for 29, not five, days after receiving each summons of garnishment. But under the new statute, Diaz-Verson argued that AFLAC, an insurance company, is a financial institution and Blach was using the wrong form. Therefore, he contended, the garnishments filed after May 12, 2016 – the date the statute went into effect – were invalid and he was entitled to get his money back. Blach argued that under the statute, an insurance company is only a “financial institution” when it is answering a garnishment that seeks to garnish a fund or account. He asserted that because AFLAC makes payments to Diaz-Verson that are akin to wages, it is not a “financial institution” for purposes of the garnishment statute.

Because the Georgia courts had not had an opportunity to interpret the state’s new garnishment statute, the U.S. District Court certified the following question for the Supreme Court of Georgia to answer before the federal court issues its decision: “Whether an insurance company is a ‘financial institution’ under the Georgia garnishment statute when the insurance company is garnished based on earnings that it owes the defendant as the defendant’s former employer.”

In today’s opinion, “we answer this question of first impression in the negative.”

Prior to the 2016 amendment to the statutes governing garnishment proceedings, the Georgia Code provided only for a general garnishment, the opinion explains. “The 2016 amendment created a new category of garnishments, those ‘served on a financial institution,’ with a garnishment period of five days.

Under Georgia Code § 18-4-4 (c) (2), a “financial institution” for purposes of a garnishment “is an entity that is a place of deposit for a defendant’s funds or medium for a defendant’s savings or investments,” the Supreme Court concludes. The new forms “further demonstrate that ‘financial institution,’ for purposes of garnishments on a financial institution under § 18-4-4 (c) (2), is intended to include only those entities that hold funds of the defendant in some type of account.”

“For the above-stated reasons, we hold that viewing the garnishment statutory scheme as a whole, it is clear that ‘financial institution’ in § 18-4-1 (4), for purposes of garnishments served on a financial institution subject to the five-day garnishment period, is limited to entities that are

‘held out to the public as a place of deposit of funds or medium of savings or collective investment’ and are garnished in that capacity.”

Attorney for Appellant (Blach): A. Binford Minter

Attorney for Appellee (Diaz-Verson): Kurt Powell

IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

- * Eduardo De La Cruz (Cook Co.) **DE LA CRUZ V. THE STATE (S17A1887)**
- * Patrick Fletcher (Ben Hill Co.) **FLETCHER V. THE STATE (S17A1978)**
- * Tracen Lamar Franklin (Douglas Co.) **FRANKLIN V. THE STATE (S17A1599)**
- * Demario Antwon Goodrum (Troup Co.) **GOODRUM V. THE STATE (S17A1748)**
- * Hiram Brainard Jones (Dougherty Co.) **JONES V. THE STATE (S17A1526)**
- * Aaron Garsua McClain (Newton Co.) **MCCLAIN V. THE STATE (S17A0818)**
- * Tonya Miller (Fulton Co.) **MILLER V. THE STATE (S17A1578)**

- * Robert Veal (Fulton Co.) **VEAL V. THE STATE (S171758)**
- * Jamad Jacque Wallace (Gwinnett Co.) **WALLACE V. THE STATE (S17A1900)**
- * Kynodious Walton (DeKalb Co.) **WALTON V. THE STATE (S17A1756)**

(Although the Supreme Court has upheld Walton’s murder conviction and life prison sentence for the shooting death of Bryant Phillips, the trial court erred by sentencing him on two counts of felony murder. When a defendant is found guilty on multiple counts of murder for a single homicide, all additional counts beyond the one for which the defendant is sentenced must be thrown out. The high court has vacated Walton’s sentence and is sending the case back to the trial court for resentencing.)

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorney:

- * Adam Lorenzo Smith **IN THE MATTER OF: ADAM LORENZO SMITH (S18Y0484)**