



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE v. ALLYN AKEEM SMITH, CR-18-0295-AP**

**PARTIES:**

Appellant: Allyn Akeem Smith

Appellee: State of Arizona

**FACTS:**

This direct appeal arises from Appellant Allyn Smith's convictions and resulting sentences for first degree murder and child abuse.

On December 11, 2014, Smith drove nineteen-year-old KL and two-month-old KS to a trail near the base of South Mountain, where he shot KL in the back of the head and shot infant KS in the thigh. KS fell out of her carrier and was left facedown against the ground. Although KS, the infant, survived after undergoing surgery, KL could not be revived. The medical examiner determined that she died of a gunshot wound to the head.

Smith was indicted for first degree murder and child abuse. The State sought the death penalty, alleging that: (1) Smith was previously convicted of a serious offense for the child abuse of KS under A.R.S. § 13-751(F)(2); and (2) Smith was motivated by pecuniary gain in murdering KL under § 13-751(F)(5). At trial, the jury unanimously found Smith guilty of both counts and sentenced him to death. The court also sentenced Smith to a presumptive consecutive prison term of twenty years for the child abuse.

Smith appeals seventeen issues and lists an additional seventeen issues that he acknowledges this Court has previously rejected in order to avoid preclusion and preserve them for further review.

**ISSUES:**

1. Did the trial court err by denying Smith's motion to suppress cell site location information ("CSLI") records, which the State had obtained pursuant to a court order based on a showing of probable cause?
2. Did the trial court violate Smith's due process rights by admitting Smith's CSLI after the State disclosed his CSLI information approximately one month after obtaining it?
3. Did the State violate Smith's Sixth Amendment right to effective assistance of counsel when it obtained Smith's CSLI through a court order, without involving Smith's counsel in the process?
4. Did the trial court abuse its discretion by admitting a witness' identification?
5. Did the trial court abuse its discretion by denying Smith's Batson challenge to two jurors?

6. Did the trial court abuse its discretion when it admitted videos depicting the general path of Smith's and the victim's cell phones the day of the homicide?
7. Did the trial court violate Smith's confrontation rights by precluding him from cross-examining the case agent on certain matters?
8. Did the trial court err when it instructed the jurors at the beginning of the aggravation phase and did not repeat the instructions at the end?
9. Is there sufficient evidence to sustain the jury's finding of the pecuniary gain aggravator?
10. Did Smith's conviction for child abuse constitute a Dangerous Crime Against Children?
11. Is there sufficient evidence to sustain the jury's finding of the prior-serious-offense aggravator?
12. Did the trial court err by instructing the jurors that they could consider as mitigation any factor, "so long as" it related to Smith's character, record, or the circumstances of the offense?
13. Did error occur when the prosecutor argued, based on the trial court's instructions, that mercy cannot be a mitigating factor standing alone?
14. Did the testimony of a mitigation rebuttal expert exceed the bounds of permissible mitigation rebuttal?
15. Did prosecutorial misconduct occur?
16. Did the trial court err by giving an impasse instruction when the jurors announced they were deadlocked?
17. Did the jury abuse its discretion by sentencing Smith to death?

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