IN THE

SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
Respondent,

v.

ANH TUAM PHAM,
Petitioner.

No. 20160502

ORDER

On September 12, 2016, we granted certiorari in this case and in *State v. Goins*. On September 6, 2017, we issued an opinion in *Goins*, 2017 UT 61, —P.3d—. After *Goins* issued, we requested supplemental briefing and asked the parties to address the impact that our holding in *Goins* may have on Pham's appeal. After reviewing the supplemental briefing and conducting oral argument, we conclude that we improvidently granted the petition for certiorari for two reasons.

First, unless and until Utah Rule of Evidence 804 is amended, we believe a Confrontation Clause challenge, like the one Pham presses here, is unlikely to arise again in this context.

Second, a majority of the court, motivated by principles of constitutional avoidance, would have been inclined to bypass the Confrontation Clause question and likely conclude that even if we were to assume a Confrontation Clause violation, any error resulting from the admission of the preliminary hearing testimony would have been harmless beyond a reasonable doubt. Because this would have yielded a fact-intensive analysis with little precedential value, we conclude that we improvidently granted the petition.

IT IS HEREBY ORDERED that the petition for certiorari to the Utah Court of Appeals is dismissed.

FOR THE COURT on this
15th day of February, 2018:

John A. Pearce
Justice

CERTIFICATE OF MAILING

I hereby certify that on February 15, 2018, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

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Case No. 20160502-SC
THIRD DISTRICT, SALT LAKE, 121903503
Court of Appeals Case No. 20140438-CA