**Summary of SC99086, *State of Missouri v. Rodney A. Smith***
Appeal from the City of St. Louis circuit court, Judge Clinton R. Wright
Argued and submitted September 15, 2021; opinion issued January 11, 2022

**Attorneys:** Smith was represented by Nina McDonnell of the public defender's office in St. Louis, (314) 340-7662. The state was represented by Kristen S. Johnson of the attorney general's office in Jefferson City, (573) 751-3321.

Certain law professors, who filed a brief as friends of the Court, were represented by Michal Durham of Dowd & Dowd PC in St. Louis, (314) 612-2500; and Chad Flanders of Saint Louis University in St. Louis, (314) 977-2778.

*This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A defendant appeals from his judgment of conviction for two counts of second-degree statutory rape after the circuit court permitted a witness to testify via two-way live video. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The circuit court erred by admitting the witness's testimony. Two-way video procedures do not categorically satisfy the requisite constitutional confrontation clause safeguards. And admission of the testimony was not harmless because, without such testimony, the state would have been unable to establish the defendant's DNA matched the DNA collected from the victim's sexual assault kit.

**Facts:** Rodney Smith was charged in connection with allegations of sexual assault made by his girlfriend's then-16-year-old daughter. The daughter later recanted her allegations, but Smith's DNA matched the DNA from the daughter's sexual assault kit. At trial, the state sought to introduce the DNA laboratory report prepared by Erik Hall. The state, however, did not initially call Hall to testify because he was on paternity leave. Smith objected to other witnesses testifying regarding the report prepared by Hall. Following a discussion by the parties, the circuit court decided to permit Hall to testify, over Smith's objection, via two-way live video. Hall testified about collecting buccal swabs from Smith and performing the DNA analysis that matched the DNA on the swabs to the DNA from the sexual assault kit. The jury found Smith guilty of two counts of statutory rape. The circuit court sentenced him to seven years in prison, suspended execution of the sentence, and placed him on probation. Smith appeals.

**REVERSED AND REMANDED.**

**Court en banc holds:** The circuit court violated Smith's constitutional right to confrontation by permitting Hall's two-way live video testimony. This Court is not willing to find two-way video procedures categorically satisfy the safeguards of the Confrontation Clause. Because the circuit court made no express finding that Hall was unavailable, this Court need not decide whether the combination of oath, cross-examination, and observation of demeanor – when utilized in a two-way video setting in which the witness is in a remote location with minimal or no safeguards – is ever enough to ensure the reliability of any witness. Furthermore, Hall's testimony was not harmless; absent his testimony, the state could not have laid a proper foundation to admit the evidence that Smith's DNA matched the DNA from the daughter's sexual assault kit.