

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

STATE OF MISSOURI,) No. ED95499
)
 Respondent,)
)
 v.) Appeal from the Circuit Court of the
) City of St. Louis
) Cause No. 0922-CR01055-01
 KENNETH SMOOT,) Honorable Michael K. Mullen
)
)
 Appellant.) Filed: December 27, 2011

Kenneth Smoot appeals the admission of a recording of the attack that led to his conviction and of allegedly involuntary statements he made to police after he was arrested which were admitted during trial for impeachment purposes.

AFFIRMED IN PART, REMANDED IN PART.

DIVISION TWO HOLDS: The trial court did not err in admitting a recording of the attack as it was part of the *res gestae* of the crime. Appellant did not properly preserve his objection as to lack of foundation of when the recording was made and there was sufficient foundation as to the identity of the voices on the recording. The trial court did err in admitting allegedly involuntary statements without first determining the voluntariness of those statements. The case is remanded back to the trial court for the limited purpose of determining the voluntariness of the statements.

Opinion by: Kenneth M. Romines, J.
Kathianne Knaup Crane, P.J. and Lawrence E. Mooney, J., concur.

Attorneys for Appellant: Gwenda Reneé Robinson

Attorneys for Respondent: Chris Koster, John Winston Grantham

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