

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
KRISTOPHER MONTE PRINCE**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD70337  
DATE: March 9, 2010

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Appeal From:

Boone County Circuit Court  
The Honorable Kevin M. J. Crane, Judge

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Appellate Judges:

Division Four: Thomas H. Newton, Chief Judge, Karen King Mitchell and Cynthia L. Martin,  
Judges

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Attorneys:

Shaun J. Mackelprang and James B. Farnsworth, Jefferson City, MO, for respondent.

Melinda K. Pendergraph, Columbia, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**KRISTOPHER MONTE PRINCE,**

**APPELLANT.**

No. WD70337

Boone County

Before Division Four Judges: Thomas H. Newton, Chief Judge, Karen King Mitchell and Cynthia L. Martin, Judges

Kristopher Prince appeals the trial court's judgment convicting him of second degree murder, unlawful use of a weapon, and armed criminal action. Prince alleges that the trial court: (1) erred in denying his motions to dismiss, accepting the verdicts, and sentencing him on second degree murder and unlawful use of a weapon in violation of his right of protection against double jeopardy; (2) erred in denying his motions to dismiss, accepting the verdicts, and sentencing him on unlawful use of a weapon and armed criminal action in violation of his right of protection against double jeopardy; (3) abused its discretion in overruling Prince's objection to the admission of jail tapes because they were inaudible and improperly bolstered a codefendant's testimony; (4) abused its discretion in overruling Prince's objection to the State's improper closing argument; (5) plainly erred in admitting testimony implicating Prince's right to remain silent; and (6) abused its discretion in denying Prince's motion for continuance.

**AFFIRMED.**

**Division Four holds:**

(1) Despite Prince's contention to the contrary, Prince was not convicted of, nor sentenced for, the enhanced version of unlawful use of a weapon. He was, therefore, not convicted of two crimes possessing as a required element a "resulting death."

(2) Unlawful use of a weapon by discharging a firearm at or from a motor vehicle is not expressly included in the armed criminal action statute as an offense for which cumulative punishment is prohibited by the legislature.

(3) The recordings are audible and they did not improperly bolster codefendant's testimony in that codefendant testified only generally about his discussions with Prince prior to the recordings being played.

(4) The State's closing argument was supported by the evidence, and the trial court did not abuse its discretion.

(5) *Miranda* is limited to custodial interrogations initiated by law enforcement. *Miranda* does not apply in this case because recording a telephone conversation between a defendant and a third party does not involve a confrontation with governmental authority in the context of a custodial interrogation calling for *Miranda* warnings.

(6) There is simply no basis to conclude that the trial court abused its discretion in refusing to permit a continuance to investigate a tangential criminal proceeding to see whether or not some angle could be developed to further implicate codefendant's credibility.

**Opinion by: Cynthia L. Martin, Judge**

March 9, 2010

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