

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs May 8, 2012

**STATE OF TENNESSEE v. BRIAN LE HURST**

**Appeal from the Criminal Court for Davidson County  
No. 2008C2864 \_\_\_\_\_ Steve R. Dozier, Judge**

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**No. M2010-01870-CCA-R3-CD - Filed December 20, 2012**

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JAMES CURWOOD WITT, JR., J., concurring.

I respectfully concur in the results in this case. My departure relates to only one issue – the rationale for affirming the trial court’s admission into evidence a portion of a recording of the victim’s telephone call to the police in which the victim expressed his concern over the defendant’s behavior. Assuming that this evidence passes the hearsay barrier as evidence of the victim’s state of mind, I would have held that the victim’s state of mind as expressed in the recording was irrelevant to the issues on trial. I note that the recording itself does not express the date of the telephone call, but the prosecutor’s oral, in-court preface to the playing of the recording indicates to the trial court that the call was placed on June 5, 2008. Given the somewhat banal comment offered on the recording and the remoteness of nearly three weeks, I see no relevancy of the statement to the issues joined at trial. That said, I would have also held that the error was harmless.

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JAMES CURWOOD WITT, JR., JUDGE