

IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT

JEFFREY WEINHAUS,)
)
 Appellant,)
)
 vs.) No. ED103834
)
 STATE OF MISSOURI,)
)
 Respondent.)

LEGAL FILE

MARK A. GROTHOFF
Office of State Public Defender
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203
(573) 777-9977/FAX (573) 777-9973
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Attorney for Appellant

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Office of the Attorney General
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Report: CZR0026

20TH JUDICIAL CIRCUIT
FRANKLIN COUNTY
CIRCUIT COURT DOCKET SHEETDate: 05-Jan-2016
Time: 12:20:53PM
Page: 1**15AB-CC00117 JEFFREY R WEINHAUS V STATE OF MISSOURI** **Security Level: 1 Public**

| | | | |
|-------------------------|---|--------------------------|-------------|
| Case Type: | CC Motn, Rules 29.15 or 24.035 | Case Filing Date: | 11-May-2015 |
| Status: | Tried by Court-Civil | | |
| Disposition: | Tried by Court-Civil | Disposition Date: | 12-Nov-2015 |
| Related Case(s): | 12AB-CR02409-01 ST V JEFFREY R WEINHAUS | | |

| | | <u>Release/Status Change Date</u> | <u>Reason</u> |
|-------------------------------|---------------------------------------|---------------------------------------|---------------------------------|
| Judge | KEITH M SUTHERLAND (21509) | | |
| Judge | GAEL D WOOD (24684) | 15-May-2015 | Judge Transferred/Reassigned |
| Movant Post-Conviction Relief | JEFFREY R WEINHAUS (WEIJR3880) | | |
| Attorney for Movant | KARL W HINKEBEIN (41666) | | |
| Defendant | STATE OF MISSOURI (STOFMO) | | |
| Prosecuting Attorney | ROBERT E PARKS II (36333) | | |

| <u>Filing Date</u> | <u>Description</u> |
|--------------------|---|
| 11-May-2015 | Pet Filed in Circuit Ct Motion to Set Aside Filed By: JEFFREY R WEINHAUS Mot to Proc In Forma Pauperis Filed By: JEFFREY R WEINHAUS Correspondence Filed Filed By: JEFFREY R WEINHAUS Judge Assigned |
| 13-May-2015 | Certificate of Mailing LETTER TO COURT REPORTER REQUESTING TRANSCRIPT (VIA USPS) Judge/Clerk - Note COPY OF PCR FORWARDED TO FRANKLIN COUNTY PA |
| 15-May-2015 | Order FROM SUPREME COURT ASSIGNING HONORABLE KEITH M SUTHERLAND. Judge Assigned |
| 26-May-2015 | Order Appointing Counsel ORDER OF APPOINTMENT OF COUNSEL AND AN ADDITIONAL THIRTY DAY EXTENSION OF TIME Order Granting Ext of Time |
| 27-May-2015 | Certificate of Mailing ORDER OF APPOINTMENT, ADDITIONAL 30 DAY EXTENSION OF TIME, MOTION TO VACATE & INFORMA PAUPERIS AFFIDAVIT MAILED TO MO PUBLIC DEFENDER THIS DATE VIA USPS |
| 03-Jun-2015 | Correspondence Filed LETTER/PAMPHLET FROM DEFENDANT TO CLERK, FILED. Filed By: JEFFREY R WEINHAUS Correspondence Sent RESPONSE PREPARED AND MAILED TO MR WEINHAUS. |

Report: CZR0026

20TH JUDICIAL CIRCUIT
FRANKLIN COUNTY
CIRCUIT COURT DOCKET SHEETDate: 05-Jan-2016
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15AB-CC00117 JEFFREY R WEINHAUS V STATE OF MISSOURI**Security Level: 1 Public****11-Jun-2015 Entry of Appearance Filed**

Entry of Appearance.

Filed By: KARL W HINKEBEIN**Motion for Extension of Time**

Request for Extension of Time to File Amended Motion.

Filed By: KARL W HINKEBEIN**12-Jun-2015** Order Granting Ext of Time**Proposed Order Filed**

Order.

Filed By: KARL W HINKEBEIN**On Behalf Of:** JEFFREY R WEINHAUS**12-Jun-2015 Order Granting Ext of Time****Entry of Appearance Filed**

Entry of Appearance; Electronic Filing Certificate of Service.

Filed By: ROBERT E PARKS**15-Jun-2015 Correspondence Filed**

LETTER TO CLERK, FILED.

Filed By: JEFFREY R WEINHAUS**Entry of Appearance Filed****Filed By:** JEFFREY R WEINHAUS**Motion Filed**

MOTION TO VACATE

Filed By: JEFFREY R WEINHAUS**16-Jun-2015 Certificate of Mailing**

FILE STAMPED COPIES OF THE MOTION TO VACATE, ENTRY OF APPEARANCE AND LETTER TO CLERK, NOTICE OF ENTRY MAILED TO JEFFREY R. WEINHAUS.

24-Aug-2015 Amended Motion/Petition Filed

Rule 29.15 Motion; Electronic Filing Certificate of Service.

Filed By: KARL W HINKEBEIN**On Behalf Of:** JEFFREY R WEINHAUS, STATE OF MISSOURI**25-Aug-2015 Judge/Clerk - Note**

PUBLIC DEFENDER, HINKEBEIN'S OFFICE CALLED TO DISCUSS THE SLIGHT CREASES THAT ARE CONTAINED IN SEVEAL PAGES OF THE AMENDED MOTION/PETITION. ADVISED MARILYN THAT I WOULD ACCEPT THE FILING AS SUBMITTED. bdm

16-Sep-2015 Answer Filed

States Answer to Movant Amended Motion Under Rule 29.15; Electronic Filing Certificate of Service.

Filed By: ROBERT E PARKS**On Behalf Of:** STATE OF MISSOURI

Report: CZR0026

20TH JUDICIAL CIRCUIT
FRANKLIN COUNTY
CIRCUIT COURT DOCKET SHEETDate: 05-Jan-2016
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| | | |
|---------------------|---|---------------------------------|
| 15AB-CC00117 | JEFFREY R WEINHAUS V STATE OF MISSOURI | Security Level: 1 Public |
|---------------------|---|---------------------------------|

07-Oct-2015 **Correspondence Filed**
Filed By: JEFFREY R WEINHAUS
Motion Filed
 MOVANT'S SECOND AMENDED MOTION UNDER RULE 29.15, FILED.
Filed By: JEFFREY R WEINHAUS
Judge/Clerk - Note
 COPY OF SECOND AMENDED MOTION UNDER RULE 29.15 MAILED TO PROSECUTUING ATTORNEY, KARL HINKEBEIN AND MOVANT.

29-Oct-2015 **Propsd/Sugg Findings of Fact**
 Findings of Fact Conclusions of Law and Judgment; Electronic Filing Certificate of Service.
Filed By: ROBERT E PARKS

12-Nov-2015 **Judgment Entered**
Tried by Court-Civil

16-Nov-2015 **Correspondence Filed**
 LETTER FROM MR WEINHAUS TO CLERK, RECEIVED.
Filed By: JEFFREY R WEINHAUS

17-Nov-2015 **Judge/Clerk - Note**
 NOTICE OF ENTRY AND COPY OF JUDGMENT IN 15AB-CC00117 MAILED TO JEFFREY WEINHAUS.

30-Nov-2015 **Motion to Set Aside**
 MOVANT'S MOTION TO SET ASIDE JUDGMENT, FILED.
Filed By: JEFFREY R WEINHAUS
04-Dec-2015 Order
Correspondence Filed
Filed By: JEFFREY R WEINHAUS
Correspondence Sent
 FILE STAMPED COPY OF THE MOTION TO SET ASIDE, AND CORRESPONDENCE WITH NOTICE OF ENTRY MAILED TO MOVANT. .
Motion Filed
 MOVANT'S PRO SE MOTION FOR ACTUAL HEARING AND NOTICE OF APPEAL FOR LACK OF DUE HEARING, FILED.
Filed By: JEFFREY R WEINHAUS
04-Dec-2015 Order

03-Dec-2015 **Correspondence Sent**
 COPY OF MOTION FOR ACTUAL HEARING AND NOTICE OF APPEAL FOR LACK OF DUE HEARING & NOTICE OF ENTRY ADDRESSED TO JEFFREY WEINHAUS DATE 11/16/18 ALONG WITH NOTICE OF ENTRY MAILED TO MOVANT.

04-Dec-2015 **Order**

Report: CZR0026

20TH JUDICIAL CIRCUIT
FRANKLIN COUNTY
CIRCUIT COURT DOCKET SHEETDate: 05-Jan-2016
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|---------------------|---|---------------------------------|
| 15AB-CC00117 | JEFFREY R WEINHAUS V STATE OF MISSOURI | Security Level: 1 Public |
|---------------------|---|---------------------------------|

DEFENDANT WITHDRAWS MOTION TO SET ASIDE JUDGMENT FILED NOVEMBER 30, 2015. MOTION FOR ACTUAL HEARING IS DENIED. SO ORDERED: KEITH SUTHERLAND

21-Dec-2015 Notice of Appeal Filed

Notice of Appeal; Electronic Filing Certificate of Service.

Filed By: KARL W HINKEBEIN**Supplemental Filing**

Civil Case Information Form; Electronic Filing Certificate of Service.

Filed By: KARL W HINKEBEIN**Mot to Proc In Forma Pauperis**

Motion for Order Allowing Appeal as a Poor Person; Electronic Filing Certificate of Service.

Filed By: KARL W HINKEBEIN**Proposed Order Filed**

Order; Electronic Filing Certificate of Service.

Filed By: KARL W HINKEBEIN**Memorandum Filed**

Letter to Clerk; Electronic Filing Certificate of Service.

Filed By: KARL W HINKEBEIN**On Behalf Of:** JEFFREY R WEINHAUS**28-Dec-2015 Ord Allow In Forma Pauperis**

ORDERED THTA MOVANT MAY PROCEED IN FORMA PAUPERIS. S/KEITH SUTHERLAND.

Filed By: KEITH M SUTHERLAND**Certfctn Del of Notc of Appeal**

NOTICE OF APPEAL; CIVIL CASE INFORMATION FORM; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; MOTION & ORDER ORDER ALLOWING APPEAL AS A POOR PERSON; MAILED TO THE MISSOURI COURT OF APPEALS-EASTERN DISTRICT, COPY TO FRANKLIN COUNTY PROSECUTING ATTORNEY

05-Jan-2016 Judge/Clerk - Note

DOCUMENTS FOR THE LEGAL FILE, COPIED, CERTIFIED AND MAILED TO KARL HINKEBEIN.

15AB-CC00117

IN THE 20 JUDICIAL CIRCUIT COURT, FRANKLIN COUNTY, MISSOURI

| | |
|---|--|
| Judge or Division: | Case Number: 12AB-CR02409-01 |
| Full Name of Movant: JEFFREY R. WEINHAUS | Movant's Address: 2727 HWY K 4C-111 BONNE TERRE "DEPTH-CAMP" MO 63628-3430 |
| State of Missouri, Respondent | |

FILED

MAY 11 2015

BILL D. MILLER, Circuit Clerk
FRANKLIN COUNTY MISSOURI
By _____ D.C.

(Date File Stamp)

Instructions - Read Carefully

In order for this motion to receive consideration by the Circuit Court, it shall be in writing (legibly handwritten or typewritten), signed by the movant, and it shall set forth in concise form the answers to each applicable question. If necessary, movant may furnish an answer to a particular question on the reverse side of the page or an additional blank page. Movant shall make it clear to which question any such continued answer refers.

This motion must be filed in the Circuit Court which imposed sentence.

The movant is required to include in this motion every claim known to him/her for vacating, setting aside or correcting the conviction and sentence or it will be waived or abandoned. Be sure to include every claim.

Movant should exercise care to assure that all answers are true and correct.

If the movant is taken in forma pauperis, it shall include an affidavit setting forth information that establishes that movant will be unable to pay costs of the proceedings. When the motion is completed, the original and two copies shall be mailed to the Clerk of the Circuit Court from which to movant was sentenced.

Motion to Vacate, Set Aside or Correct the Judgment or Sentence

1. Place of detention:

ERDCC 2727 HWY K 4C-111 BT, MO 63628

2. Name and location of court which imposed sentence:

20TH CIRCUIT - UNION MO 63084

3. The case number and the offense or offenses for which sentence was imposed:

12AB-CR02409-01 - ATTEMPTED ASSAULT 1ST, A.C.A.

POSSESSION MORPHINE, MARIJUANA

4. (a) The date upon which sentence was imposed and the terms of the sentence:

11/25/13 30 YEARS, 30 YEARS, 2 YEARS, 1 YEAR

- (b) The date upon which you were delivered to the custody of the department of corrections to serve the sentence you wish to challenge:

11/25/13 - 1 YEAR LATER 11/25/14 FERGUSON BURNS

COINCIDENCE?

5. Check whether a finding of guilty was made:

(a) After a plea of guilty _____ (b) After a plea of not guilty ✓

6. Did you appeal from the judgment of conviction? YES

7. If you answered "yes" to (6), list

(a) the name of the court to which you appealed:

EASTERN DISTRICT APPEALS - SUPREME COURT MISSOURI

(b) the result in such court and the date of such result:

UNPUBLISHED - MEMO - 1/27/15 - MOTION REHEARING, 3/11/15
MOTION TO TRANSFER MO. S.C. DENIED 4/29/15

(c) the date the appellate court's mandate issued:

MOTION FOR REHEARING E.D. MO. APP. 3/11/15 - MOTION TO TRS. 4/29/15

8. State concisely all the claims known to you for vacating, setting aside or correcting your conviction and sentence:

(a) NO EVIDENCE TO SUSTAIN CONVICTION OF "ASSAULTED
SGT. FOLSON BY "SHOOTING HIM"

(b) INEFFECTIVE ASST. OF COUNSEL, FAILED TO CALL FBI AGENTS,
DEMAND MISTRIAL AFTER EVIDENCE FOR "TAMPERING" WAS PLAYED TO JURY.

(c) 8 POINTS OF "APPEAL" IN ED100807 - CONSTITUTIONAL CLAIMS
ARTICLE I SEC 2 - EQUAL JUSTICE
ART. I SEC 10 DUE PROCESS

9. State concisely and in the same order the facts supporting each of the claims set out in (8), and the names and addresses of the witnesses or other evidence upon which you intend to rely to prove such facts:

(a) JUDGE KEITH SUTHERLAND, 104 W. MAIN ST. WARRENTON MO 63383
FAILED TO INSTRUCT JURY AND ERRORED ON NUMEROUS OTHER POINTS
SEE - ED100807

(b) HUGH EASTWOOD 7777 BONHOMME AVE. STE 1603 CLAYTON MO 63105
FBI AGENTS CUNNINGHAM AND MAURSHACK 2222 MARKET ST. STL. 63102
FAILED TO CALL FBI - OFFER ANY EXHIBITS - PRESENT EXC. EVIDENCE
FAILED TO ASK FOR MISTRIAL, FAILED TO SUMMON SHERIFF, FAILED
TO ATTACK ILLEGAL SEARCH WARRANT, SEE ATTACHED INTER. ASST
COUNSEL CLAIM.

C IN ADDITION TO 8 POINTS OF APPEAL, CONST. CLAIM OF - EQUAL JUSTICE
ART I SEC 2 MO. CONST. - DUE PROCESS ART I SEC 10, JUSTICE DENIED ART I SEC 11.
SEE CONST. CLAIM ATTACHED

10. Prior to this motion have you filed with respect to the conviction:

- (a) Any motion to vacate judgment under Missouri Supreme Court rule 24.035, 27.26 or 29.15? NO
- (b) Any petitions in state or federal courts for habeas corpus? ~~NO~~ YES HAB-FILED STATE-COURT 2-14-13
- (c) Any petitions in the United States Supreme Court for certiorari? NOT YET
- (d) Any other petitions, motions or applications in this or any other court? ~~NO~~ YES

11. If you answered "yes" to any part of (10), list with respect to each petition, motion or application

(a) the specific nature thereof:

- i. MOTION TO DISMISS FILED 4-13 12AB-CR02409-01
- ii. MOTION TO QUASH GRAND JURY INDICTMENT FILED 3-9-13
- iii. _____

(b) the name and location of the court in which each was filed:

- i. 20TH CIRCUIT COURT - UNION MO
- ii. _____
- iii. _____

(c) the disposition thereof and the date of such disposition:

- i. MOTION TO DISMISS - DENIED 4/25/13
- ii. MOTION TO QUASH G.J., DENIED 3/19/13
- iii. _____

(d) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____

12. Has any claim set forth in (8) been previously presented to this or any other court, state or federal, in any petition, motion or application that you have filed?

YES

13. If you answered "yes" to (12), identify

- (a) the claims that have been previously presented:

i. MOTION TO DISMISS - 11-1-13

ii. MOTION TO QUASH GRAND JURY INDICTMENT 3-19-13

iii. _____

- (b) the proceedings in which each claim was raised:

i. 4-25-13 PRETRIAL -

ii. 3-19-13 BOND REDUCTION - EVIDENTIARY HEARING

iii. _____

14. If you have filed prior proceedings in any state or federal court involving this same sentence but did not raise therein one or more of the claims you now list in (8), state which were not raised in the earlier proceedings and why they were not raised in those proceedings:

- (a) CONSTITUTIONAL CLAIMS WERE NOT RAISED DUE TO INEFFECTIVE COUNSEL. THEY ARE #1 - ART I SEC 2 MO. CONST. EQUAL JUSTICE UNDER THE LAW. DESPITE EVIDENCE THAT TRIALERS PERJURED THEMSELVES THEY HAVE NOT BEEN CHARGED, ~~THE~~ DEFENDANT HAS NOT HAD EQUAL OPPORTUNITY TO MOUNT A DEFENSE. NO TOOLS TO DEFEND HIMSELF. HAD TO HIRE COUNSEL WHO TURNED OUT TO BE GROSSLY INEFFECTIVE.

- (c) #2 ~~JO~~ ARTICLE I SECTION 14 - JUSTICES SHALL NOT BE FOR SALE, DENIAL OR DELAY. A) WRIT OF HABEAS CORPUS NOT FILED DUE TO FAILURE TO PAY FILING FEE 9/7/12 B) TRIAL COURT - APPEALS COURT

AND MISSOURI SUPREME COURT. ARE ALL ACTING IN CONCERT TO DENY AND DELAY JUSTICE. EXCULPATORY EVIDENCE HAS BEEN IGNORED BY MISSOURI JUDICIARY WHO ALL HAVE A CONFLICT OF INTEREST DUE TO DEFENDANTS OUTSPOKEN CRITICISM OF JUDICIAL BRANCH. #3 ARTICLE I SECTION 10 DUE PROCESS HAS BEEN DENIED MOUNT. A) SEARCH WARRANT WAS ILLEGAL B) GRAND JURY INDICTMENT SHOULD HAVE BEEN QUASHED C) COUNSEL SO INEFFECTIVE, THAT ART I SEC 6 US. CONST, MOUNT HAD NO COUNSEL. ART I SEC 16 - WILLFUL MISCONDUCT IN PUBLIC OFFICE - SEE ATTACHED -

15. Were you represented by an attorney at any time during the course of

- (a) your preliminary hearing? NO PRELIM - G.J. NO TRANSCRIPT OF PROCEEDING
- (b) your arraignment and plea? TYSON MUTRIX
- (c) your trial, if any? HUGH EASTWOOD -
- (d) your sentencing? " "
- (e) your appeal, if any, from the judgment of conviction or the imposition of sentence? DAVE BARTHOLOW
- (f) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

16. If you answered "yes" to one or more of part (15), list

- (a) the name and address of each attorney who represented you
- i. HUGH EASTWOOD 7777 BONHOMME AVE STE 1405 - CLAYTON MO 63105
- ii. TYSON MUTRIX - ST. LOUIS ADDRESS UNKNOWN
- iii. DAVE BARTHOLOW - MO PUBLIC DEFENDER 1000 W. NIFOLK CBL MO 65203
- (b) the proceedings at which each such attorney represented you
- i. EASTWOOD - TRIAL
- ii. MUTRIX - INITIAL PLEA
- iii. BARTHOLOW - APPEAL

17. Are you now under sentence from any other court that you have not challenged? NO

18. If you are seeking leave to proceed in forma pauperis, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)? YES -

I, JEFFREY WEINHAUS, movant in this case, state by subscribing to this petition; that I know the contents thereof; that the above information is, to the best of my knowledge, true and correct; that I have listed every claim known to me for vacating, setting aside or correcting the conviction and sentence attacked in this motion; and that I understand that I waive any claim for relief known to me that I have not listed in this motion.

Jeffrey Weinhaus

Signature of Movant

FILED

MAY 11 2015

BILL D. MILLER, Circuit Clerk
FRANKLIN COUNTY MISSOURI
by _____ D.C.THE RECTOR
COUNSELATTACHMENT FOR
Form 40 - 29-15 PROCEEDING

PAGE 1

INEFFECTIVE - INCOMPETENT ASSISTANCE OF COUNSEL.

HUGH EASTWOOD HIRED COUNSEL PAID OVER \$7,000 FROM FUNDS RAISED ON INTERNET FAILED TO PROVIDE ADEQUATE LEGAL DEFENSE, HIS PERFORMANCE WAS SO SUBPAR THAT IN EFFECT I WAS DENIED LEGAL COUNSEL. TO WIT.

1) FAILED TO ATTACK ORIGINAL SEARCH WARRANT ISSUED 8/22/12 WARRANT WAS DEFECTIVE - ABSENT PROBABLE CAUSE - SMELL OF MARIJUANA TO SEIZE COMPUTERS - CAMERAS (PRINTING PRESS). D.A. PARKS NOTRIZED OWN SIGNATURE. JUDGE HOVEN, P.A. PARKS, AND SGT. H.J. FOLSON (FIRED FROM MHP) FAILED TO NOTIFY LOCAL SHERIFF UPON APPLICATION BREAKING MO. RS. CH3.200. LOCAL SHERIFF WAS NOT PRESENT UPON EXECUTION OF SAID ILLEGAL/UNLAWFUL SEARCH WARRANT. FAILED TO SUMMON SHERIFF GARY TOELKE TO TESTIFY TO JURY. EASTWOOD KNEW A) WHAT SHERIFF WOULD HAVE TESTIFIED TO - B) WOULD HAVE AIDED DEFENSE C) SHERIFF WAS AVAILABLE AND IN COURT EASTWOODS FAILURE EFFECTIVELY DENIED MOVANT DUE PROCESS ART I SEC 10 MO. CONST ART I SEC 14 U.S. CONST.

2) FAILED TO RENEW MOTION TO QUASH GRAND JURY INDICTMENT "FOLSON LIED TO GRAND JURY" - ABOUT RESISTING ARREST CHARGE. AND G.J. INDICTED MOVANT FOR "ATTEMPTING TO ASSAULT SGT. FOLSON AND MERTENS "BY SHOOTING THEM". NO EVIDENCE MOVANT SHOT OR SHOT AT TROOPERS. NO TRANSCRIPT OF ALLEGED GRAND JURY PROCEEDING 11/28/12, VIOLATING MISSOURI OPEN COURT RECORDS STATUTE. EASTWOODS FAILURE TO ATTACK GRAND JURY INDICTMENT DENIED MOVANT DUE PROCESS ART I SEC 10 MISSOURI CONST. ARTICLE I SEC 14 U.S. CONST. ARTICLE I SEC 6 - NO COUNSEL AFFORDED.

TO PAGE 2

FILED

MAY 11 2015

BILL D. MILLER, Circuit Clerk
FRANKLIN COUNTY MISSOURI
by D.C.THE COURT'S
COUNSELATTACHMENT FOR
Form 40 - 29-15 PROCEEDING

PAGE 2

EASTWOOD
3) ~~Folsom~~ Failed to Summon FBI AGENTS CUNNINGHAM AND MARSCHUK who WITNESSED THE ASSAULT ON MOVANT. EVEN THOUGH EASTWOOD KNEW AFTER DEPOSITIONS WERE TAKEN ON 7/23/13 THAT THE SPECIAL FEDERAL AGENTS, HAD AN UNENCUMBERED VIEW OF MOVANT'S RIGHT SIDE, (WHICH TROOPERS TESTIFIED - TESTIFIED THAT MOVANT WAS "ATTEMPTING TO DRAW" FROM) THEY SAW NO WEAPON OR ANY ATTEMPT TO DRAW SAID WEAPON. EASTWOOD WILLFULLY - MALICIOUSLY CHOSE NOT TO SUMMON FBI KNOWING A) WHAT THEY WOULD HAVE TESTIFIED TO. B) IT WOULD HAVE AIDED IN MOVANT'S DEFENSE. C) AGENTS WERE PRESENT IN COURT-ROOM, READY, WILLING AND ABLE TO TESTIFY. AGENTS TESTIMONY WAS SO DEVASTATING TO PROSECUTIONS CASE THEY WERE REMOVED FROM P.A. WITNESS LIST. EASTWOOD WAS ASKED TO CALL AGENTS TO TESTIFY, WHICH HE REFUSED, BY MOVANT AT TRIAL. THIS EGGERIOUS, UNETHICAL CONDUCT OF EASTWOOD IS PARAMOUNT TO MOVANT BEING FAIRLY CONVICTED AND IMPRISONED FOR THE LAST 912 DAYS. FBI AGENTS WOULD HAVE CLEARLY IMPERCHED TROOPERS TESTIMONY OF WHAT SIDE GUN WAS ON. EASTWOODS FAILURE RISES TO SUBORNING OF PERJURY.

4) EASTWOOD FAILURE TO INTRODUCE ANY EXHIBITS IS PROOF POSITIVE THAT HE WILLFULLY WITH MALICE AFORETHOUGHT ATTEMPTED TO SABOTAGE MOVANTS DEFENSE. HE SHOULD HAVE INTRODUCED A) STILL SHOT SHOWING HOLSTERED WEAPON ON MOVANTS "LEFT" FRONT HIP, CONFIRMING FBI DEPOSITION/INITIAL REPORT THAT GUN WAS OUT OF VIEW AND NOT ON "RIGHT" SIDE. TO PAGE 3 (SEE SUPPLEMENTAL LEGAL FILE E010080)

FILED

MAY 11 2015

BILL D. MILLER, Circuit Clerk
FRANKLIN COUNTY MISSOURI
BY _____J. Miller
CounselorATTACHMENT FOR
Form 40 29-15 PROCEEDING

PAGE 3

- 4) CONT. FROM PAGE 2, EASTWOOD ALSO FAILED TO INTRODUCE SERIES OF STILL SHOTS TAKEN FROM WATCH CAMERA VIDEO THAT SHOWED CPE. MEERTENS APPROACHING MOVANT AT HIGH READY GUN DRAWN POINTED DOWN AT GROUND, UNPLANNED CONTRADICTING TROOPERS CLAIM I WAS ATTEMPTING TO "DRAW," BEFORE I (MOVANT) WAS SHOT 4 TIMES.
- 5) EASTWOOD FAILED TO SUMMON (CALL AUDIO/VIDEO EXPERT WHO CAME FORWARD ON HIS OWN ACCORD, KNOWING THAT, JIM BYRNE, WOULD HAVE TESTIFIED - REBUTTING PROSECUTIONS CLAIM THAT I (MOVANT) SAID "YOU ARE GOING TO HAVE TO SHOOT ME, MAN"; BYRNE WAS/WOULD HAVE TESTIFIED THAT MOVANT SAID "YOU DON'T HAVE TO SHOOT ME, MAN". BYRNE HAD ALSO RIGGED WATCH CAMERA TO GO LIVE, CLEARING UP CONFUSION TO HOW WATCH VIDEO WORKED, BYRNE WAS READY, WILLING AND ABLE TO TESTIFY AND WAS IN EASTWOODS OFFICE THE DAY BEFORE TRIAL, INSISTING HE BE SUMMONED. EASTWOOD REFUSED!
- 6) EASTWOOD FAILED TO ASK FOR MISTRAL AFTER ONLY EVIDENCE FOR TAMPERING CHARGE, THAT WAS DISMISSED, THE 8/16/12 VIDEO WAS PLAYED TO JURY REPEATLY AT TRIAL TAINTING THE JURY. RESISTING ARREST CHARGE WAS ALSO DISMISSED BEGGING THE QUESTION WHY WAS MOVANT ASSAULTED IF I WAS NOT RESISTING?
- 7) EASTWOOD ALLOWED 5 OF 12 JURORS TO BE SEATED DESPITE THEIR ADMISSION THEY HAD FRIENDS AND FAMILY IN LAW ENFORCEMENT. JURY FOREPERSONS DAUGHTER HAD DRUG CHARGES PENDING, MS. SEIVE ~~also~~ CLAIMED THAT SHE DID NOT KNOW, WHO/WHERE CHARGES WERE PENDING.

FILED

MAY 11 2015

BILL D. MILLER, Circuit Clerk
FRANKLIN COUNTY MISSOURI
By _____ D.C.

INEFFECTIVE COUNSEL

ATTACHMENT F
Form 40 - 29-15 PROCEEDINGS.

PAGE 4

8) EASTWOOD ALSO ACTED UNETHICALLY AND WITH MALICE AFORETHOUGHT BY REFUSING TO REPRESENT MOVANT IN AN ORDER OF PROTECTION HEARING HELD 9/2/13 IN WHICH MOVANT'S ESTRANGED EX-WIFE WHO HIRED EASTWOOD ON BEHALF OF MOVANT BEFORE "DIVORCE," CLAIMED THAT MOVANT WAS HARASSING AND STALKING HER DESPITE BEING "LOCKED UP". JUDY KROPF MET EASTWOOD ON 9/26/13 AND PAID HIM \$250. EASTWOOD CALLED HER TO TESTIFY AS TO CHARACTER OF MOVANT DURING SENTENCING PHASE OF TRIAL. KROPF TESTIFIED TO THE 10 WOMAN JURY THAT MOVANT WAS VERBALLY ABUSIVE, FIVE WOMAN SEIVE ALSO HAD DOMESTIC VIOLENCE CASE SHE ADMITTED TOO IN VOIR DIRE. THIS OBVIOUSLY TAINTED JURY TO GIVE MAXIMUM SENTENCE TO MOVANT OF 30 YEARS, NEVER MIND I WAS /AM ONLY INJURED PARTY. THERE ARE OTHER CLAIMS AS WELL. TO NUMEROUS

TO MENTION THEREFORE FOR GOOD CAUSE SHOWN, IT IS CLEAR, COMPELLING AND EVIDENT THAT HUGH EASTWOOD WAS SO INEFFECTIVE THAT ONE CAN ONLY SURMISE THAT ~~THE~~ HIS PERFORMANCE WAS INEFFECTIVE ON PURPOSE! HOWEVER WOULD HAVE A JURY CONVICTED ~~OF~~ MOVANT OF "ASSAULTED SGT. FELSOM BY SHOOTING HIM" WHEN NO EVIDENCE WAS PRESENTED TO THE JURY THAT I SHOT ANYONE AND NO INJURY, LOSS OR HARM HAD BEFALLEN ANYONE BUT MOVANT. I DOUBT THAT THERE HAS EVER BEEN A CLEARER CASE OF "MANIFEST INJUSTICE" - IN THE HISTORY OF AMERICAN JURISPRUDENCE!

FILED

MAY 11 2015

BILL D. MILLER, Circuit Clerk
FRANKLIN COUNTY MISSOURI
by _____ D.C.ATTACHMENT FOR 27-16
PROCEEDINGS
TO Supplement # 14 "CONSTITUTIONAL CLAIMS"

HEREIN ARE THE "CONSTITUTIONAL CLAIMS" IN THE
MATTER 12AB-CR02409-01

- 1) ART I SEC 2 MO-CONST. EQUAL RIGHTS AND OPPORTUNITY
UNDER THE LAW. MOVANT HAS BEEN DENIED EQUAL PROTECTION,
RIGHTS AND OPPORTUNITY, WHILE IN CUSTODY MOVANT HAS/IS
BEING DENIED EQUAL OPPORTUNITY TO DEFEND HIMSELF.
WHILE THE ATTORNEY GENERAL HAS UNFETTERED INTERNET-
EMAIL-INSTANT COMMUNICATION, CELL PHONE-COMPUTER WORD
PROCESSING CAPABILITIES AND TIME TO USE THESE "TOOLS".
MOVANT HAS A LEGAL PAD AND A PEN. LESS THAN 4
HOURS A WEEK TO GO TO LAW LIBRARY, WHERE THERE IS
A 30 YEAR OLD TYPEWRITER. IS THAT EQUAL JUSTICE?
MOVANT WAS ACQUITTED OF ASSAULT ON CPR. MERTENS
AND RESISTING ARREST. MERTENS ADMITS THAT HE
SHOT ME TWICE, THOUGH HE IS OBVIOUSLY "ABOVE
THE LAW", SINCE HE HAS NOT BEEN CHARGED OR ARRESTED
AND STILL ON THE PAYROLL OF MISSOURI TAX-PAYING
CITIZENS, MOVANT HAS PAID OVER \$ 200 IN SALES TAX
SINCE I HAVE BEEN IN PRISON! MORE EQUAL JUSTICE?
ASSAULT ON A LAW ENFORCEMENT OFFICER IS TWICE
THE PENALTY AS SIMPLE ASSAULT-THUS THE POLICE
ARE AN OBVIOUSLY PROTECTED CLASS (EQUAL JUSTICE
OR JUST-US?)(911)^{ARE} ABOVE THE LAW, OF COURSE THAT
IS THE WAY THE SHOW-ME STATE DOES "BUSINESS".
COMPARE THE STATE OF MISSOURI WITH MARYLAND.
100 DAYS, NO INDICTMENT, FERGUSON BURNS AS THE ~~MASS~~
GUARD PULLS OUT OF TOWN. 1 DAY 6 CHARGES, BALTIMORE
CITIZENS DANCE IN THE STREETS. JUSTICE FOR ALL!

FILED

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29.15 PROCEEDINGS
IN SUPPORT OF #14 - CONSTITUTIONAL
CLAIMS CONT.

MAY 11 2015

BILL D. MILLER, Circuit Clerk
FRANKLIN COUNTY MISSOURI
By _____ D.C.

ART I SEC 2 MO. CONST. CONTINUED. THE WELFARE OF THE PEOPLE IS THE SUPREME LAW OF THIS STATE. THE ORGANIC POINT AND PURPOSE OF OUR GOVERNMENT, IS TO PROTECT AND MAINTAIN OUR GOD GIVEN RIGHTS, OF LIFE AND LIBERTY. WHEN IT FAILS TO DO SO, IT HAS FAILED IT'S CHIEF DESIGN. IN NOT ONLY THIS INSTANT CASE, BUT WELL OVER A DOZEN OTHER MATTERS, CITIZENS OF THIS STATE HAVE BEEN SLAIN BY POLICE. NOT ONE OFFICER OF THE "LAW," HAS EVEN BEEN CHARGED. THE ONLY LEGIT JUSTIFICATION FOR VIOLENCE IS IN RESPONSE TO VIOLENCE. "FEARING FOR ONE'S LIFE" IS NOTHING MORE THAN A "COP-CUT" AND A LICENSE TO KILL. "NOTHING CAN DESTROY A GOVERNMENT MORE QUICKLY THAN IT'S FAILURE TO OBSERVE IT'S OWN LAWS. OR WORSE, IT'S DISREGARD OF THE CHARTER OF THEIR OWN EXISTENCE" TOM CLARK "THE TYRANNY OF GOOD INTENTIONS"

- 2) ~~ART I SEC 14~~ ART I SEC 14 MO. CONST. "JUSTICE SHALL NOT BE FOR SALE, DENIAL OR DELAY" ON 9/7/12, I ATTEMPTED TO FILE A WRIT OF REPLEVIN WITH THE MISSOURI SUPREME COURT, CONCERNING THE RETURN OF MOVANTS "PRINTING PRESS". FOR MORE THAN TWO WEEKS I COULD NOT FIND AN ATTORNEY TO TAKE UP THIS MATTER. ON FRIDAY 9/7/12 I FAXED THE WRIT TO THE CLERK OF THE SUPREME COURT. UNKNOWN TO MOVANT, THIS "WRIT" WAS REJECTED BY MO. SC. (THOUGH A COPY WAS GIVEN TO THE MISSOURI FUSION CENTER.) FOR LACK OF A \$70 FILING FEE. TROOPER FOLSOM ON 9/11/12, CALLED MOVANT AND TOLD ME, THAT HE HAD BEEN "ORDERED" BY THE COURT TO RETURN MY "EQUIPMENT". DESPITE MY PHONE # AND EMAIL WHERE ON FILE, I WAS NOT NOTIFIED OF THE REJECTION. A LETTER ARRIVED THE AFTERNOON OF 9/11/12.

MAY 11 2015

BILL D. MILLER, Circuit Clerk
FRANKLIN COUNTY MISSOURI
By 2 D.C.ATTACHMENT - Form CD-2015
TO SUPPLEMENT #14 "CONST. CLAIMS"

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"JUSTICE SHALL NOT BE FOR SALE, DENIAL OR DELAY" CONT. MOVANT BELIEVES ANY FILING FEE IN SEARCH OF "JUSTICE" WOULD BE SELLING JUSTICE. DENIAL 8 POINTS OF APPEAL (EO100807) WERE PRESENTED TO THE EASTERN DISTRICT. THE MAJORITY OF THE POINTS ALONG WITH THE INEFFECTIVE COUNSEL CLAIMS WERE PRESENTED AT SENTENCING 11/25/13. PARDON WAS NOT GRANTED BY THE TRIAL COURT IN ADDITION TO THE INEFFECTIVE COUNSEL CLAIMS, THESE FACTS WERE DENIED AND IGNORED BY THE TRIAL COURT. ON APPEAL, IN AN UNPUBLISHED MEMO, THE CIVIL DIV OF THE EASTERN DISTRICT ONCE AGAIN DENIED, THUS DELAYING ALL 8 POINTS OF APPEAL, INCLUDING THE FACT THAT MOVANT WAS ACTUALLY CONVICTED OF "ASSAULTED SGT. FOLSON BY SHOOTING HIM" DESPITE THE FACT THAT SUPREME COURT RULES WERE NOT FOLLOWED BY RESPONDENT (ATTORNEYS GEN) THE APPEALS COURT WOULD NOT GRANT REHEARING AND MISSOURI SUPREME COURT WOULD NOT TAKE UP MATTER. THUS DENYING AND DELAYING JUSTICE. OBVIOUSLY JUSTICE RUSSELL'S "STATE OF THE JUDICIARY ADDRESS 1-22-14" "PROMISE TO SUPPORT AND DEFEND OUR CONSTITUTION AND TREAT EVERYONE WITH FAIRNESS, DIGNITY AND RESPECT" IS AN OUTRIGHT LIE! I HAVE BEEN HELD "HOSTAGE" FOR OVER 900 DAYS BY THE STATE OF MISSOURI. JUSTICE ~~IS~~ DELAYED IS JUSTICE DENIED!

- 3) ART I SEC 10 MO. CONST. DUE PROCESS: MOVANT HAS BEEN "DUE PROCESS" THROUGHOUT THIS MATTER. THE ORIGINAL SEARCH WARRANT ISSUED ON 8/22/12 WAS ILLEGAL, IN VIOLATION OF RSMO 043.200. CONT TO PAGE 4

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CONSTITUTIONAL CLAIMS

Form 40 - 29-15

MAY 11 2015

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BILL D. MILLER, Circuit Clerk
FRANKLIN COUNTY MISSOURI
By _____

Art 1 Sec 10 MO. CONST. DUE PROCESS: CONT. IT WAS WITHOUT PROBABLE CAUSE, WHICH WAS THE SMELL OF MARIJUANA, THOUGH THE WARRANT WAS TO SEIZE THE COMPUTERS AND CAMERAS USED TO PRODUCE MOUNTAIN NEWS - LETTER AND POST VIDEOS ON YOUTUBE. P.A. PARKS NOTARIZED HIS OWN SIGNATURE, P.A. PARKS, JUDGE HOVEN AND TROOPER FOLSON FAILED TO NOTIFY THE LOCAL SHERIFF UPON APPLICATION, IN VIOLATION OF RSMO 043.200. NOR WAS THE SHERIFF PRESENT UPON EXECUTION OF SAID ILLEGAL UNLAWFUL SEARCH WARRANT. A SECOND WARRANT ISSUED ON 8/24/12 IN COLE COUNTY TO "SEARCH" THE ILLEGALLY SEIZED COMPUTERS WAS ALSO WITHOUT THE KNOWLEDGE OF THE COLE COUNTY SHERIFF. NUMEROUS OTHER DUE PROCESS CLAIMS ARE DETAILED IN APPELLANTS APPEAL BRIEF (EO100807). DUE PROCESS WAS ALSO DENIED IN MOUNTAIN'S MOTION TO DISMISS-QUASH GRAND JURY INDICTMENT. (SEE LEGAL FILE VOL I P. 3648 EO100807). IT IS CLEAR, OBVIOUS AND EVIDENT DUE PROCESS HAS/IS BEING DENIED MOUNTAIN.

- 4) ART 1 SEC 16 MO. CONST. WILLFUL MISCONDUCT IN PUBLIC OFFICE: P.A. ROBERT PARKS III FRANKLIN COUNTY, HAS WILLFULLY ENGAGED IN EGGERIOUS UNETHICAL PRACTICES SINCE HE APPLIED FOR THE 8-22-12 SEARCH WARRANT. THERE WAS NO PROBABLE CAUSE TO SEIZE THE COMPUTERS AND CAMERAS USED TO PRODUCE A PUBLICATION HIGHLY CRITICAL OF HIS "BROTHERS IN THE LAW". ARE WE TO BELIEVE THE SOURCE OF THE SMELL OF MARIJUANA WAS THE COMPUTERS (PRINTING PRESS). MR. PARKS ACTUALLY NOTARIZED HIS OWN SIGNATURE. FURTHERMORE

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CONSTITUTIONAL CLAIMS

Form 40-29.15 -

MAY 11 2015

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BILL D. MILLER, CLERK
FRANKLIN COUNTY MISSOURI
By _____

ART I SEC 16 MO CONST. CONTINUED. P.A. PARKS, SHOULD HAVE KNOWN THE STATUTE REQUIREMENTS OUT 3200 RSMO. (IGNORANCE OF THE LAW, IS NO EXCUSE). NEITHER HE, JUDGE HOUGH OR TROOPER FOLSON NOTIFIED THE SHERIFF. IGNORANCE OR A BLATANT DISREGARD FOR THE 'LAW'? ON 9/11/12, PARKS ISSUES AN "ARREST" WARRANT BASED ON THE ILLEGAL WARRANT (SEARCH). DESPITE MORPHINE NOT BEING LISTED AS ITEMS TO BE SEIZED, THE ARREST (DEPT) WARRANT WAS FOR POSSESSION OF MORPHINE, MARIJUANA AND THE TAMPERING WITH JUDGE PARKER. "CHARGE". WITHIN 24 HOURS OF THE ATTEMPT ON MY LIFE, P.A. PARKS KNEW THAT THE TROOPERS ACCOUNT OF THE SHOOTING, DID NOT MATCH THE AUDIO ACCOUNT, WHICH MY EX-WIFE POSTED ON FACEBOOK PROMPTING THE HIGHWAY PATROL ~~TO~~ SEIZE THE COMPUTER IT WAS RECORDED ON. IN ADDITION TO THE TROOPERS LYING ABOUT MY "ATTEMPT" TO DRAW, FOLSON ALSO CLAIMED HE TOLD ME "TO REMOVE MY HAND OFF THE GUN" BOTH TROOPERS CLAIM THEY TOLD ME ABOUT "PAPERS TO SIGN" CONCERNING THE RETURN OF MY COMPUTERS. FIVE EYE WITNESS INCLUDING TWO FEDERAL FBI AGENTS MADE NO MENTION OF AN "ATTEMPT TO DRAW" ALL OF THEM SAW ME FALL TO THE GROUND HANDS EMPTY. INSTEAD OF CHARGING FOLSON AND MERTENS WITH "ATTEMPTED MURDER" ON 11-12, PARKS CHARGED ME WITH "ATTEMPTED MURDER", AS WELL AS A.C.A. AND "RESISTING ARREST". THE ONLY EVIDENCE "PROBABLE CAUSE" WAS THE TROOPERS TESTIMONY ALREADY KNOWN TO BE INACCURATE. A CLASSIC CASE OF SUBORNING PERJURY. PARKS TO THIS DAY HAS WILLFULLY

FILED

MAY 11 2018 6

BILL D. MILLER, Circuit Clerk
FRANKLIN COUNTY MISSOURI
By _____

ART 1 SEC 16 MO CONST. WILLFUL MISCONDUCT IN PUBLIC OFFICE. PARKS HAS ENGAGED IN OBSTRUCTING JUSTICE, CONSPIRACY TO FALSIFY IMPRISON. IT IS THE PATTERN AND PRACTICE OF THE "OFFICERS OF THE COURT" IN THIS CASE TO IGNORE THE EXCULPATORY EVIDENCE OF MOVANTS INNOCENCE. ALL OF THE FOLLOWING ARE WELL AWARE OF THE FACTS OF THIS CASE WHICH ~~IS~~ ^{ARE} CLEARLY AGAINST THE LOGIC OF CIRCUMSTANCES BEFORE THIS COURT WHICH ARE SO ABSURD, ARBITRARY AND UNREASONABLE AS TO SHOCK THE SENSE OF JUSTICE AND NOT ONLY INDICATE A LACK OF CAREFUL CONSIDERATION ~~AND~~ ^{BUT} AN ONGOING CONSPIRACY TO DEPRIVE MOVANT OF HIS LIFE, LIBERTY AND ENJOINMENT OF THE FRUITS OF HIS INDUSTRY. P.A. PARKS CO-CONSPIRATORS ARE JUDGE KEITH SUTHERLAND, ATTORNEY GENERAL CHRIS KOSTNER, ASST AG SHAUN MACKELPRANG, APPEALS JUDGES, COHEN, RICHTER AND CLAYTON, MISSOURI SUPREME COURT JUDGES, TEITELMAN, BRECKENRIDGE, DRAPER, FISHER, RUSSELL, STITH, WILSON. ALL ARE IN VIOLATION OF ART 1 SEC 16 MISSOURI CONSTITUTION. THUS TRESPASSING -- .

GATEWOOD
DAVID HAVEN

ART 1 SEC 23 MO. CONST. SGT. FOLSOM ~~OFF~~ ON 9/11/12 QUESTIONED MY RIGHT TO HAVE A FIREARM. SEE VIDEO! ART 1 SEC 18 - RIGHT TO COUNSEL. SEE INEFFECTIVE COUNSEL CLAIM. EASTWOOD WAS OBVIOUSLY COMPROMISED. THE 29.15 PROCEEDING I UNDERSTAND, PROHIBITS ME FROM THE OPPORTUNITY TO APPEAR AND DEFEND MY CLAIMS. THIS IS UNCONSTITUTIONAL AS WELL. ABOVE ARE THE STATE CONSTITUTIONAL CLAIMS. THE FEDERAL ARE 1, 2, 4, 5, 6, 7, 8 AND 14. THE D.O.J. CIVIL RIGHTS UNIT IN D.C. IS AWARE AND CONDUCTING AN INVESTIGATION -- .

IN THE CIRCUIT COURT OF FRANKLIN COUNTY,
STATE OF MISSOURI

JEFFREY WEINHAUS,

Movant,

vs.

STATE OF MISSOURI,

Respondent.

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Case No. 15AB-CC00117

AMENDED MOTION UNDER RULE 29.15

Comes now Movant, Anthony Bruenn, by undersigned counsel, and hereby amends his previously filed *pro se* motion under 29.15, stating as follows:

1. Place of Movant's Detention:

Eastern Reception, Diagnostic and Correctional Center, 2727 Highway K, Bonne Terre, MO 63628.

2. Sentencing Court & Location:

Circuit Court of Franklin County, at Union, Missouri.

3. Case Number & Offenses:

Franklin County Case No. 12AB-CR02409-01; two counts possession of a controlled substance, morphine (count I) and marijuana (Count III), §195.202;¹ class A felony first degree assault (count IV), § 565.050, armed criminal action (count V), § 571.015.

¹ All statutory citations are RSMo 2000.

4(a). Sentencing Date & Terms:

November 25, 2013; two years in the Missouri Department of Corrections (MDOC) for count I, two terms of thirty years in the MDOC for counts IV and V, and one year in the county jail for count III. All sentences were ordered to run concurrently.

(b). Delivery Date to Department of Corrections:

November 25, 2013.

5. Findings of Guilty made after:

Jury trial occurring October 8-10, 2013.

6-7. Appellate Proceedings:

Eastern District Case No. ED100807; the judgment was affirmed on January 27, 2015; the court's mandate issued on April 30, 2015.

8. Claims for Postconviction Relief:

Movant was denied his right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 18(a) of the Missouri Constitution because his trial counsel failed to exercise the customary skill and diligence that reasonably competent attorneys would under the same or similar circumstances and as a result thereof, Movant was prejudiced. Specifically, Movant's trial counsel were ineffective for the following reasons:

(a). Trial counsel unreasonably failed to call a forensic expert, such as Gene Gietzen (or Jim Byrne), to testify that the video from the watch showed Movant's movements to be inconsistent with police officer testimony.

(b). Trial counsel unreasonably failed to call FBI Special Agent Michael Maruscak to testify at Movant's trial.

(c). Trial counsel unreasonably failed to call FBI Special Agent Patrick Cunningham to testify at Movant's trial.

(d). Trial counsel unreasonably failed to present stills from Movant's watch camera from which the jury would have concluded that the holster Movant was wearing was on his left side.

(e). Trial counsel unreasonably failed to investigate and call to testify Levi Weinhaus to testify that Movant usually wore his holster on his left hip when he was driving.

(f). Trial counsel unreasonably elicited testimony that a majority of 20 people to whom Sgt. Fulsom showed the video "The Parties Over" took it seriously.

(g). Trial counsel failed to adequately establish for the jury major discrepancies between Corporal Merten's and Sergeant Fulsom's testimony, their police reports, and the video of the shooting.

(h). Trial counsel unreasonably failed to call a video expert, such as Jim Byrne to testify that Movant said "you don't have to shoot me."

9. Facts in Support of Foregoing Claims:

(a). Trial counsel unreasonably failed to call a forensic expert, such as Gene Gietzen (or Jim Byrne), to testify that the video from the watch showed Movant's movements to be inconsistent with police officer testimony.

Briefly and relevantly summarized, the state's evidence was that on September 10, 2012, the Missouri State Highway Patrol determined that they would arrest Movant on drug and tampering charges (Tr. 207, 208, 274). Highway Patrol Officers Sergeant James Folsom and Corporal Scott Mertens had previously found the drugs while executing a search warrant at Movant's residence and at that time had also seized computer equipment belonging to Movant (Tr.180). The officers knew Movant wanted his computer equipment back (Tr.207, 209-210, 272-73), and so on September 11, 2012, Folsom and Mertens decided they would arrest Movant while pretending they were returning his computers (Tr.208, 385). They called Movant and arranged to meet in public – at an MFA gas station near Movant's home (Tr.209-210).

As Movant pulled into the parking lot, Folsom and Mertens got out of their car (Tr. 213, 217). Folsom told Mertens to go to their trunk and open it in order to maintain the ruse that they had Movant's computer equipment (Tr. 218, 390). Movant exited his vehicle carrying a holstered gun on his right hip (Tr. 219, 304, 403). Folsom unholstered his own weapon and asked Movant why he was wearing the gun (Tr. 219, 317; State's Ex.15).² Movant asked Folsom what Folsom was doing with a gun (Tr. 220, 317, 317; Ex.15). Folsom told Movant that he was authorized to have a gun, and Movant replied that he was also so authorized (Tr. 220, 317; Ex.15).

²State's Exhibit 15 was a disk containing video of a camera-watch being worn by Movant when he was shot.

According to Folsom, Movant manipulated the flap of the holster with his right hand (Tr. 220).³ Folsom stated that Movant pulled down on the safety ring to disengage the flap, swept the flap up and placed his hand on the butt of the gun (Tr.221). Mertens said he saw Movant reach down and pull on the flap of the holster, which released it (Tr.391). Mertens saw Movant put his hand under the holster and grab the butt of the gun (Tr. 392). Folsom and Mertens ordered Movant to the ground (Tr. 222, 329, 392, 414). According to Folsom, Movant started shaking and said, “you’re going to have to shoot me,” and he began to pull the weapon from the holster (Tr. 223, 321, 327). Movant’s gun never cleared the holster (Tr. 421). Folsom shot Movant twice in the chest and twice in THE head (Tr. 223, 227, 330, 339, 349; Ex.15). After Folsom began shooting, Mertens also shot Movant (Tr. 393). Movant fell to the ground (Tr. 224, 394).

Fulsom testified that when he ordered Movant to the ground, just prior to Movant attempting to draw his weapon and getting shot, Movant had changed from a “bladed” position⁴ to one where “he was squared up to me, we were squared face to face, toe to toe” (Tr. 221). This assertion is inconsistent with the video evidence, which a Crime Scene Analysis/Reconstruction could have established. This could have been done through the testimony of an expert in crime-scene analysis and reconstruction like Gene Gietzen.

³ Folsom was familiar with the holster-type -- it is designed for retention of the weapon and it is very difficult to open (Tr.220, 306-308).

⁴ A “bladed position” was described by Fulsom as “standing sideways with [Movant’s] left foot in front of his right foot at a 45 degree angle[.]” (Tr. 219).

Gene Gietzen (or Jim Byrne) would have testified that the movement of Movant's left arm is inconsistent with him blading and then facing off with Fulsom. Reasonably competent counsel would have investigated and called an expert like Gene Gietzen (or Jim Byrne) to consult, examine and testify at Movant's trial. Mr. Gietzen (or Byrne) was willing and available to testify to the foregoing at Movant's trial. No reasonable trial strategy can account for the failure to hire and call an expert such as Gene Gietzen (or Jim Byrne) to testify. Had counsel called Gene Gietzen (or Jim Byrne) to testify to the foregoing, a reasonable probability would have existed of a different result at Movant's trial.

In support of his claim, Movant will rely on: the testimony of defense counsel, Hugh Eastwood, 777 Bonhomme Ave, Clayton, MO 63105; the testimony of defense counsel Christopher Combs, 4245 W. Pine, St. Louis, MO 63108; P.O. Box 1011, 1947 E. Page St., Springfield, MO 65802; the testimony of Gene Gietzen, P.O. Box 1011, 1947 E. Page St., Springfield, MO 65802; the testimony of Jim Byrne, 644 Meramec Station Rd., Valley Park, MO 63088; the testimony of Special Agent Justin Glick, Missouri Department of Revenue Digital Forensic Investigation Unit, Division of Drug and Crime Control, PO Box 58, Jefferson City, MO 65102; the testimony of Movant, Jeffrey R. Weinhaus, Inmate No. 1261778, Eastern Reception, Diagnostic and Correctional Center, 2727 Highway K, Bonne Terre, MO 63628; and the underlying criminal file and transcript in Franklin County Case No. 12AB-CR02409-01.

(b). Trial counsel unreasonably failed to call FBI Special Agent Michael Maruscak to testify at Movant's trial.

For this claim, Movant incorporates by reference the contents of paragraph 9(a), *supra*. Before setting up the ruse computer exchange with Movant, Troopers Folsom and Mertens contacted the local FBI office for assistance (Tr. 208). Two FBI agents went to the MFA, Michael Maruscak and Patrick Cunningham. Agent Maruschak testified in deposition that he did not see a holster on Movant's right hip (where Fulsom and Mertens said it was). This holster would have been visible to Agent Maruschak from his perspective had Movant been "bladed" or toe-to-toe with Mertens. Reasonably competent counsel would have investigated and called Agent Maruschak to testify at Movant's trial. Agent Maruschak was willing and available to testify to the foregoing at Movant's trial. No reasonable trial strategy can account for the failure to call him to testify. Had counsel called Agent Maruschak to testify to the foregoing, a reasonable probability would have existed of a different result at Movant's trial.

In support of this claim, Movant will rely on: the testimony of defense counsel, Hugh Eastwood, 7777 Bonhomme Ave, Clayton, MO 63105; the testimony of defense counsel Christopher Combs, 4245 W. Pine, St. Louis, MO 63108; P.O. Box 1011, 1947 E. Page St., Springfield, MO 65802; the testimony of FBI Special Agent Michael Maruscak, 2222 Market Street, St. Louis, MO 63103; the testimony of Movant, Jeffrey R. Weinhaus, Inmate No. 1261778, Eastern Reception, Diagnostic and Correctional Center, 2727 Highway K, Bonne Terre, MO 63628; and the underlying criminal file and transcript in Franklin County Case No. 12AB-CR02409-01.

(c). Trial counsel unreasonably failed to call FBI Special Agent Patrick Cunningham to testify at Movant's trial.

For this claim, Movant incorporates by reference the contents of paragraph 9(a), *supra*. Before setting up the ruse computer exchange with Movant, Troopers Folsom and Mertens contacted the local FBI office for assistance (Tr. 208). Two FBI agents went to the MFA, Patrick Cunningham and Michael Maruscak. Agent Cunningham testified in deposition that he did not see a holster on Movant's right hip (where Folsom and Mertens said it was). This holster would have been visible to Agent Cunningham from his perspective had Movant been "bladed" or toe-to-toe with Mertens. Reasonably competent counsel would have investigated and called Agent Cunningham to testify at Movant's trial. Agent Cunningham was willing and available to testify to the foregoing at Movant's trial. No reasonable trial strategy can account for the failure to call him to testify. Had counsel called Agent Cunningham to testify to the foregoing, a reasonable probability would have existed of a different result at Movant's trial.

In support of this claim, Movant will rely on: the testimony of defense counsel, Hugh Eastwood, 7777 Bldomme Ave, Clayton, MO 63105; the testimony of defense counsel Christopher Cons, 4245 W. Pine, St. Louis, MO 63108; the testimony of FBI Special Agent Patrick Cunningham, 2222 Market Street, St. Louis, MO 63103; the testimony of Movant, Jeffrey R. Weinhaus, Inmate No. 1261778, Eastern Reception, Diagnostic and Correctional Center, 2727 Highway K, Bonne Terre, MO 63628; and the underlying criminal filed transcript in Franklin County Case No. 12AF-CR02409-01.

(d). Trial counsel unreasonably failed to present stills from Movant's watch camera from which they would have concluded that the holster Movant was wearing was on his side.

For this claim, Movant incorporates by reference the contents of paragraphs 9(a), (b) and (c), *supra*. Troopers Folsom and Mertens both stated Movant was carrying his (green) holster with a black gun on his right hip (Tr. 219, 304, 403). Stills from Movant's camera phone shows at approximately 01:41:55 a reflection off of Movant's vehicle that the jury would have concluded showed a green holster on Movant's *left* hip. Movant requested his counsel show the jury the stills showing the holster on the left side. No reasonable trial strategy can account for the failure to do so. Had counsel presented stills showing the holster on the left side, a reasonable probability would have existed of a different result at Movant's trial.

In support of this claim, Movant will rely on: the testimony of defense counsel, Hugh Eastwood, 7777 Bonhomme Ave Clayton, MO 63105; the testimony of defense counsel Christopher Combs, 4245 W. Ine, St. Louis, MO 63108; the testimony of Gene Gietzen, P.O. Box 1011, 1947 E. PagSt., Springfield, MO 65802; the testimony of Jim Byrne, 644 Meramec Station Rd., Vacy Park, MO 63088; the testimony of Movant, Jeffrey R. Weinhaus, Inmate No. 121778, Eastern Reception, Diagnostic and Correctional Center, 2727 HighwayK, Bonne Terre, MO 63628; and the underlying criminal file and transcript in Franklin County Case No. 12AB-CR02409-01.

(e). **Trial counsel unreasonably failed to investigate and call to testify Levi Weinhaus to testify that Movant wdd wear his holster on his left hip when he was driving.**

For this claim, Movant incorpoes by reference the contents of paragraph 9(a), *supra*. Troopers Folsom and Corporacott Mertens stated Movant was carrying his

(green) holster with a black gun on his right hip (Tr. 219, 304, 403). Movant contended it was on his left hip. Levi Weinhaus would have testified that Movant would wear his holster on his left hip when he was driving -- the holster would interfere with the seatbelt when wore on the right hip. Reasonably competent counsel would have investigated and called Levi Weinhaus to testify to the foregoing at Movant's trial. Levi Weinhaus was willing and available to testify to the foregoing at Movant's trial. No reasonable trial strategy can account for the failure to call him to testify. Had counsel called Levi Weinhaus to testify to the foregoing, a reasonable probability would have existed of a different result at Movant's trial.

In support of this claim, Movant will rely on: the testimony of defense counsel, Hugh Eastwood, 7777 Bonhomme Ave, Clayton, MO 63105; the testimony of defense counsel Christopher Combs, 4245 W. Pine, St. Louis, MO 63108; the testimony of Levi Weinhaus, Belleville, Il; the testimony of Movant, Jeffrey R. Weinhaus, Inmate No. 1261778, Eastern Reception, Diagnostic and Correctional Center, 2727 Highway K, Bonne Terre, MO 63628; and the underlying criminal file and transcript in Franklin County Case No. 12AB-CR02409-01.

(f). Trial counsel unreasonably elicited testimony that a majority of 20 people to whom Sgt. Fulsom showed the video "The Parties Over" took it seriously.

For this claim, Movant incorporates by reference the contents of paragraph 9(a), *supra*. Sgt. Fulson testified that on August 18, 2012, he received a phone call from Judge Kelly Parker to investigate a You Tube video that posted by Movant that Judge Parker

thought threatened judicial officers (Tr. 168-69; Ex. 1 and 1A). During the cross-examination of Sgt. Fulsom the following colloquy occurred regarding that video:

Q. Do you think that some people could think that Jeff's video was a joke?

A. I think there probably are some people who would think it was a joke; however, I think the majority of people who view that people were offended.

Q. When you say the majority, how many people did you talk to about this video?

A. Several, more than 20.

(Tr. 265).

Reasonably competent counsel would not have elicited the foregoing (hearsay) information establishing that members of the public he showed the video to took it seriously. No reasonable trial strategy can account for eliciting such testimony. But for counsel's foregoing error, a reasonable probability would have existed of a different result at Movant's trial.

In support of this claim, Movant will rely on: the testimony of defense counsel, Hugh Eastwood, 7777 Bonhomme Ave, Clayton, MO 63105; the testimony of defense counsel Christopher Combs, 4245 W. Pine, St. Louis, MO 63108; the testimony of Movant, Jeffrey R. Weinhaus, Inmate No. 1261778, Eastern Reception, Diagnostic and Correctional Center, 2727 Highway K, Bonne Terre, MO 63628; and the underlying criminal file and transcript in Franklin County Case No. 12AB-CR02409-01.

(g). Trial counsel failed to adequately establish for the jury major discrepancies between Corporal Merten's and Sergeant Fulsom's testimony, their police reports, and the video of the shooting.

For this claim, Movant incorporates by reference the contents of paragraph 9(a), *supra*. In his police report, Fulsom stated that he told Mertens to open the trunk to the police car after he "immediately realized" Movant was not responding to his attempts at conversation. There was no conversation on the video that Movant did not respond to, and the video has no exchange where Fulsom tells Mertens to open the trunk after this purported lack of conversation by Movant. Fulsom stated in his police report that he told Movant to take his hands off his gun before shooting him. This is not on the video. In fact, during cross-examination, Fulsom says he "did not have time" to tell Movant that. (Tr. 325). In his police report Mertens stated that he heard Fulsom tell Movant he had papers he needed to sign. This is not on the video. At trial, Mertens said that he fired his gun because Movant was a threat to Fulsom – Movant was not a threat to him (Tr. 428). In his police report, however, Mertens said that "In fear for my life and the life of Sergeant Fulsom, I began to fire my patrol issued firearm."

None of the foregoing discrepancies were established at trial. Reasonably competent counsel would have done so. No reasonable trial strategy can account for the foregoing failure. But for counsel's failure to adequately impeach, a reasonable probability would have existed of a different result at Movant's trial.

In support of this claim, Movant will rely on: the testimony of defense counsel, Hugh Eastwood, 7777 Bonhomme Ave, Clayton, MO 63105; the testimony of defense

counsel Christopher Combs, 4245 W. Pine, St. Louis, MO 63108; the testimony of James Folsom and Scott Mertens, current address unknown; the testimony of Movant, Jeffrey R. Weinhaus, Inmate No. 1261778, Eastern Reception, Diagnostic and Correctional Center, 2727 Highway K, Bonne Terre, MO 63628; and the underlying criminal file and transcript in Franklin County Case No. 12AB-CR02409-01.

(h). Trial counsel unreasonably failed to call a video expert, such as Jim Byrne to testify that Movant said "you don't have to shoot me."

The state asserted Movant said you're going to have to shoot me, and then attempted to draw his gun. Jim Byrne analyzed the video and determined Movant said, "you don't have to shoot me." Reasonably competent counsel would have investigated and called an expert like Jim Byrne to consult, examine and testify to the foregoing at Movant's trial. Mr. Byrne was willing and available to testify to the foregoing at Movant's trial. No reasonable trial strategy can account for the failure to hire and call an expert such as Jim Byrne to testify. Had counsel called Jim Byrne to testify to the foregoing, a reasonable probability would have existed of a different result at Movant's trial.

In support of this claim, Movant will rely on: the testimony of defense counsel, Hugh Eastwood, 7777 Bonhomme Ave, Clayton, MO 63105; the testimony of defense counsel Christopher Combs, 4245 W. Pine, St. Louis, MO 63108; P.O. Box 1011, 1947 E. Page St., Springfield, MO 65802; the testimony of Jim Byrne, 644 Meramec Station Rd., Valley Park, MO 63088; the testimony of Movant, Jeffrey R. Weinhaus, Inmate No. 1261778, Eastern Reception, Diagnostic and Correctional Center, 2727 Highway K,

Bonne Terre, MO 63628; and the underlying criminal file and transcript in Franklin County Case No. 12AB-CR02409-01.

14. Prior Pleadings:

None, other than Movant's *pro se* motion filed in this cause on May 11, 2015.

15-16. Prior Counsel:

Movant was represented in Franklin County Case No. 12AB-CR02409-01 at trial and sentencing by Hugh Eastwood, 7777 Bonhomme Ave, Clayton, MO 63105, and Christopher Combs, 4245 W. Pine, St. Louis, MO 63108. He was also represented in the case by Ross Mutrux, 1717 Park Ave., St. Louis, MO 63104; he was represented on appeal in Eastern District Case No. ED100807 by Amy Bartholow, Assistant Appellate Defender, Area 50, 1000 W. Nifong, Bldg. 7, Suite 100, Columbia, MO 65203.

17. Other Current Sentences:

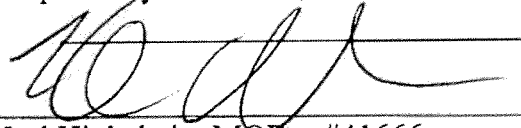
None.

18. Statement of Indigency:

Movant has been granted leave to proceed *in forma pauperis*.

WHEREFORE, Movant requests that the Court grant an evidentiary hearing in the above-captioned cause, sustain the foregoing amended motion under 29.15, and vacate Movant's convictions and sentences imposed in Franklin County Case No. 12AB-CR02409-01, and order a new trial.


Respectfully submitted,



Karl Hinkebein, MOBar #41666
Attorney for Movant
Woodrail Centre
1000 W. Nifong, Bldg. 7, Suite 100
Neosho, Missouri 65203
(573) 777-9977/FAX (573) 777-9973
E-Mail: Karl.Hinkebein@mspd.mo.gov

CERTIFICATE OF SERVICE

I, Karl Hinkebein, hereby certify that on this 24th day of August, 2015, the following was e-filed and thus served to the Office of Franklin County Prosecutor.


Karl Hinkenbein

FILED
NOV 12, 2015
BILL D MILLER, Circuit Clerk
FRANKLIN COUNTY, MISSOURI

IN THE CIRCUIT COURT OF FRANKLIN COUNTY
STATE OF MISSOURI

JEFFREY WEINHAUS
Movant,
VS

STATE OF MISSOURI,
Respondent,

) Cause No. 15AB-CC00117
)
) Division No.
) Judge: Sutherland
)
)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Now, on this, the 12th day of November, 2015 the Circuit Court of the County of Franklin, having considered the motions filed by the Movant, the State's response, the record, and the Court's file in State of Missouri v. Jeffrey Weinhaus, being Franklin County Circuit Court case number 12AB-CR02409-01, does hereby make the following findings of fact, conclusions of law, and judgment:

**MOVANT'S CLAIM DOES NOT ESTABLISH GROUNDS FOR WHICH
RELIEF MAY BE GRANTED**

In an evidentiary hearing on a motion for post-conviction relief pursuant to Rule 29.15, a movant must satisfy both prongs of the test set out in *Strickland v. Washington*, 466 U.S. 668 (1984). Movant must (1) establish that trial counsel's performance was deficient; and (2) prejudice. *Id.* at 687. The test is conjunctive – if the movant fails to satisfy either prong, the entire claim fails. The standard established by the U.S. Supreme Court in *Strickland* has been the standard used in Missouri since *Seales v. State*, 580 S.W.2d 733 (Mo. banc 1979).

“An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland* at 691. “The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier

to dispose of ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.” *Id.* at 697. Missouri courts have adopted this decision matrix. “[A] court can evaluate an ineffective assistance of counsel claim on the basis of lack of prejudice alone, and it should do so if it is easier to dispose of an ineffectiveness claim solely on that basis.” *Richardson v. State*, 719 S.W.2d 912, 916 (Mo.App.) E.D. 1986).

“The fact that an error by counsel might have had some conceivable effect on the outcome is not sufficient.” *Id.* at 915. To establish prejudice, a movant “must show there is a reasonable probability that, absent the alleged error, the fact finder would have had a reasonable doubt respecting guilt.” *Id.* at 915-916. There are, admittedly, some cases in which prejudice is presumed. These cases are limited to instances of actual or constructive denial of the assistance of counsel altogether, cases involving state interference with counsel’s assistance, and actual conflict of interest. *Strickland*, 466 U.S. at 692. “[A]ctual ineffectiveness claims alleging a deficiency in attorney performance is subject to a general requirement that the defendant affirmatively proves prejudice.” *Id.* at 693. “The fact that an error by counsel might have had some conceivable effect on the outcome is not sufficient.” *Richardson*, 719 S.W.2d at 915.

In paragraph 8 (Movant’s claims for post-conviction relief), the following suggestions of ineffectiveness are listed:

- (a). Trial counsel unreasonably failed to call a forensic expert, such as Gene Gietzen (or Jim Byrne), to testify that the video from the watch showed Movant’s movements to be inconsistent with police officer testimony.
- (b). Trial counsel unreasonably failed to call FBI Special Agent Michael Maruscak to testify at Movant’s trial.
- (c). Trial counsel unreasonably failed to call FBI Special Agent Patrick Cunningham to testify at Movant’s trial.

- (d). Trial counsel unreasonably failed to present stills from Movant's watch camera from which the jury would have concluded that the holster Movant was wearing was on his left side.
- (e). Trial counsel unreasonably failed to investigate and call to testify Levi Weinhaus to testify that Movant usually wore his holster on his left hip when he was driving.
- (f). Trial counsel unreasonably elicited testimony that a majority of 20 people to whom Sgt. Fulsom showed the video "The Parties Over" took it seriously.
- (g). Trial counsel failed to adequately establish for the jury major discrepancies between Corporal Merten's and Sergeant Fulsom's testimony, their police reports, and the video of the shooting.
- (h). Trial counsel unreasonably failed to call a video expert, such as Jim Byrne to testify that Movant said "you don't have to shoot me."

MOVANT STATES CONCLUSIONS WITHOUT ANY SHOWING OF PREJUDICE

Movant's pleadings do not meet the standards outlined in *Strickland*'s two part test. Movant does not state in any of his claims that he was prejudiced by the actions of his attorney. Movant claims that the actions of his attorney might have had some effect are not sufficient to overcome his burden of showing prejudice as required in *Richardson*.

THEREFORE after having considered the motions filed by the Movant, the Motion filed by the Respondent, the Court's file, and the transcripts of the plea and sentencing proceedings, this Court cannot find a factual or legal basis to support Movant's claims. This Court determines that the motion and the files and records of the case conclusively show that the Movant is entitled to no relief.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Movant's motion is without merit on all points raised and denied as a matter of law.



Keith M. Sutherland
Senior Judge

IN THE
CIRCUIT COURT OF FRANKLIN COUNTY, MISSOURI

JEFFREY WEINHAUS,

Movant,

V.

STATE OF MISSOURI,

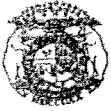
Respondent.

Cause No. 15AB-CC00117

ORDER

NOW ON THIS 28th day of December, 2015, the Court, having considered Movant's motion to perfect an appeal as a poor person, finds that the Movant is totally without means or resources and is a poor person within the meaning of the law. Therefore, it is hereby ordered that Movant may proceed in forma pauperis.

Judge



IN THE 20TH JUDICIAL CIRCUIT COURT, FRANKLIN COUNTY, MISSOURI

| | | | |
|--|--|--|--|
| Judge or Division: Hon. Keith M. Sutherland | | Case Number: 15AB-CC00117 | |
| Plaintiff/Petitioner: JEFFREY WEINHAUS | | Appellate Number: | <input checked="" type="checkbox"/> Filing as an Indigent |
| | | Court Reporter: | <input type="checkbox"/> Sound Recording Equipment |
| | | Reporter's Telephone: () - | Number of Days of Trial: |
| Defendant/Respondent: STATE OF MISSOURI | | Date of Judgment/Sentence: 11/12/15 (Attach a copy) | Date Post Trial Motion Filed: n/a |
| | | Date Ruled Upon: n/a | Date Notice Filed: 12/21/15 |
| | | (Date File Stamp) | |

Notice of Appeal

☐ Supreme Court of Missouri Court of Appeals: ☐ Western ☒ Eastern ☐ Southern

Notice is given that Jeffrey Weinhaus appeals from the judgment/decreed entered in this action on November 12, 2015.

Complete if Appeal is to Supreme Court of Missouri

Jurisdiction of the Supreme Court is based on the fact that this appeal involves:
(Check appropriate box)

- | | |
|---|---|
| <input type="checkbox"/> The validity of a treaty or statute of the United States | <input type="checkbox"/> The title to any state office in Missouri |
| <input type="checkbox"/> The punishment imposed is death | <input type="checkbox"/> The construction of the revenue laws of Missouri |
| <input type="checkbox"/> The validity of a statute or provision of the Constitution of Missouri | |

If the basis of jurisdiction is validity of a United States treaty or statute, the validity of a Missouri statute or Constitutional provision or construction of Missouri revenue laws, a concise explanation, together with suggestions, if desired, is required. This may be filed as part of or with this notice of appeal or, in the alternative, may be filed within ten days after the notice of appeal is filed by filing it directly with the Clerk of the Supreme Court. See Rule 81.08(b) and (c) and Rule 30.01(f) and (g).

| | | | |
|--|------------------------------|--|------------------------------|
| Appellant's Attorney/Bar Number Stephen J. Harris, Mo. Bar No. 37908 | | Respondent's Attorney(s)/Bar Number(s) (If multiple, list all or attach additional sheets) Shaun Mackelprang, Bar No. 49627 | |
| Address Office of State Public Defender 1000 W. Nifong, Bldg. 7, Ste. 100, Columbia, MO 65203 | | Address Office of the Attorney General P.O. Box 899, Jefferson City, MO 65102 | |
| Telephone (573) 777-9977 | Fax (573) 777-9973 | Telephone (573) 751-3321 | Fax (573) 751-5391 |
| Appellant's Name Jeffrey Weinhaus, Reg. No. 1261778 | | Respondent's Name STATE OF MISSOURI | |
| Address Eastern Reception, Diagnostic & Correctional Center 2727 Highway K Bonne Terre, MO 63628 | | Address | |
| Telephone (573) 358-5516 | | Telephone | |
| Brief Description of Case Appeal of the denial of a Rule 29.15 motion to vacate, set aside or correct judgment of conviction and sentence without an evidentiary hearing. | | | |
| Date of Appeal Bond n/a | Amount of Bond n/a | <input type="checkbox"/> Bond Attached | |
| Signature of Attorney or Appellant <i>Stephen Harris by Keith</i> | | | Date 12/21/15 |

Notice to Appellant's Attorney

Local rules may require supplemental documents to be filed. Please refer to the applicable rule for the district in which the appeal is being filed and forward supplements as required.

Certificate of Service

I certify that on December 21, 2015, I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

Franklin County Prosecuting Attorney – VIA e-filing system

Stephen Harris
Appellant or Attorney for Appellant

Directions to Clerk

Serve a copy of the notice of appeal in a manner as prescribed by Rule 43.01 on the attorneys of record of all parties to the judgment other than those taking the appeal and on all other parties who do not have an attorney. (A copy of the notice of appeal is to be sent to the Attorney General when the appeal involves a felony.) Transmit a copy of the notice of appeal to the clerk of the Supreme Court/Court of Appeals. If a party does not have an attorney, mail the notice to the party at his/her last known address. Clerk shall then fill in the memorandum below. (See Rules 81.08(d) and 30.01(h) and (i).) Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice by ☐ regular mail ☐ registered mail ☐ certified mail
☐ facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

FRANKLIN COUNTY PROSECUTING ATTORNEY

VIA EFILING

I have also transmitted a copy of the notice of appeal to the clerk of the

- ☐ Supreme Court ☒ Court of Appeals, EASTERN District
- ☐ Docket fee in the amount of \$ _____ has been received by this clerk which will be disbursed as required by statute.
- ☒ A copy of an order granting leave to appeal as indigent.

12/28/15
Date

Brian Miller
Clerk

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICTAPPEAL NO. ED**CIVIL CASE INFORMATION FORM**

(This form must be filed with the Notice of Appeal with the Circuit Clerk)

List every party involved in the case, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Court of Appeals (e.g. appellant or respondent) and the name of the attorney of record, if any, for each party. Attach additional sheets to identify all parties and attorneys if necessary.

Party

JEFFREY WEINHAUS

Attorney

Stephen J. Harris

37908

NameBar No.Woodrail Centre, 1000 W. Nifong
Bldg. 7, Suite 100Address

Columbia, MO 65203

City, State, Zip Code

(573) 777-9977

Phone Number

Office of State Public Defender

Law Firm or Office

v.

STATE OF MISSOURI

Shaun Mackelprang

49627

NameBar No.

P.O. Box 899

Address

Jefferson City, MO 65102

City, State, Zip Code

(573) 751-3321

Phone Number

Office of the Attorney General

Law Firm or OfficeThe Record on Appeal will consist of: ☒ Legal File only or ☐ Legal File and Transcript

ATTACH A COPY OF THE JUDGMENT OR ORDER APPEALED.

A BRIEF STATEMENT OR DESCRIPTION OF THE CASE (Any monetary awards shall be set forth. Attach one additional page, if necessary.)

Denial of Supreme Court Rule 29.15 post-conviction motion without evidentiary hearing.

ISSUES EXPECTED TO BE RAISED ON APPEAL (Attach one additional page, if necessary. Appellant is not bound by this list. Attach copy of post-trial motion, if one was filed.)

Whether the motion court clearly erred in denying the Rule 29.15 post-conviction motion without an evidentiary hearing.

A COPY OF THIS FORM AND ATTACHMENTS MUST BE SERVED ON THE RESPONDENT

LEGAL FILE
CERTIFICATION

STATE OF MISSOURI)
)
)
COUNTY OF FRANKLIN)

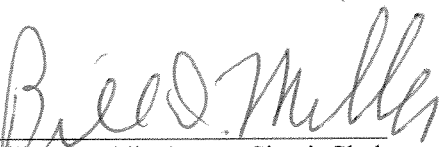
Case No 15AB-CC00117
Appeals Court Case No. ED103834

I, Bill D. Miller, Clerk of the Circuit Court, within and for the County aforesaid, do hereby certify that the foregoing and annexed are full, true and complete copies of the following:

1. Docket Sheets, 4 Pages
2. Pro Se Second Amended Motion Under Rule 29.15, 5 Pages
3. Amended Motion Under Rule 29.15, 15 Pages
4. Pro Se Motion to Vacate, Set Aside or Correct the Judgment or Sentence, 15 Pages
5. Pro Se Motion to Vacate, 2 Pages
6. State's Answer to Movant Amended Motion Under Rule 29.15, 4 Pages
7. Findings of Fact, Conclusions of Law, and Judgment, 3 Pages
8. Pro Se Motion to Set Aside Judgment, 2 Pages
9. Pro Se Motion for Actual Hearing and Notice of Appeal for Lack of Hearing, 4 Pages
10. December 4, 2015, Notice of Entry, 1 Page
11. Notice of Appeal; Civil Case Information Form; Findings of Fact, Conclusions of Law, and Judgment; Motion for Order Allowing Appeal as a Poor Person; Order; December 28, 2015, Notice of Entry, 10 Pages

In the case of: JEFFREY R. WEINHAUS vs STATE OF MISSOURI, rendered in this Court in the above entitled cause, as fully as the same appears and is on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of Union, Missouri, this 5th day of January, 2016.



Bill D. Miller, Franklin County Circuit Clerk

LEGAL FILE CERTIFICATE OF SERVICE

I, Mark A. Grothoff, hereby certify that on this 20th day of January, 2016, a true and correct electronic copy of the foregoing was sent through the Missouri e-Filing System to Shaun Mackelprang, Assistant Attorney General, at shaun.mackelprang@ago.mo.gov, and a true and correct electronic copy of the foregoing Legal File cover page and index was sent through the Missouri e-Filing System to Franklin County Circuit Court.

/s/ Mark A. Grothoff

Mark A. Grothoff