

IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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CASE NO.: \_\_\_\_\_

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LUCAS CAMPBELL,

*Petitioner,*

versus

MICHAEL BOWERSOX, Warden, South Central Correctional Center

*Respondent.*

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PETITION FOR A SUCCESSIVE/SECOND HABEAS CORPUS  
PETITION  
PURSUANT TO 28 U.S.C. § 2244

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**COMES NOW** Petitioner, Lucas Campbell, and respectfully moves this Honorable Court for leave to file a successive, or second habeas corpus petition pursuant to 28 U.S.C. § 2244, Federal Rule of Appellate Procedure, and Local Rule 22B, and in support states:

**GROUND FOR RELIEF**

- I. Whether Petitioner Was Denied His Due Process Rights When the State Failed to File a Formal Charging Document

**OUTCOME OF THE PRIOR HABEAS CORPUS PETITION**

1. On June 10, 2011, petitioner filed a, pro se, 2254 petition for Writ of Habeas Corpus in the United States District Court in the Western District of Missouri (Springfield), docket # 6:11-cv-03209-RED.

2. On February 28, 2012, the United States District Court in the Western District of Missouri (Springfield) denied the 2254 petition, dismissed with prejudice, and denied the issuance of a certificate of appealability.

3. On November 21, 2013, petitioner filed a, pro se, petition for a Writ of Habeas Corpus in the Missouri Court of Appeals, docket # 13TE-CC00484.

4. On May 13, 2014, the Missouri Court of Appeals denied the Writ of Habeas Corpus.

## **STATEMENT OF RELEVANT FACTS**

### **Pre-Trial Proceedings**

On August 24, 2004, a felony complaint was filed in the Circuit Court of Greene County, Missouri charging Petitioner with murder in the first degree (§ 565.020), and the court found probable cause. On November 9, 2004, a preliminary hearing was held, and the court found probable cause to hold Petitioner for trial. On November 12, 2004, Petitioner was formally arraigned on all of the charges. No indictment or information was ever filed.

On April 28, 2005, Petitioner filed a pro se motion for speedy trial and the Court's intervention in conflict of interest issues. On May 11, 2005, Petitioner filed a pro se motion to dismiss counsel. On May 16, 2005, Petitioner filed a pro se motion for a temporary restraining order. On May 19, 2005, the court addressed the pro se motions with Petitioner and ordered counsel to meet with Petitioner within two weeks to address the issues. However, on June 6, 2005 the court was informed that counsel had failed to communicate with Petitioner. On September 15, 2005, Petitioner filed a second pro se motion for speedy trial. On September 19, 2005, Petitioner filed a pro se motion to compel. On October 11, 2005, Petitioner filed a pro se motion to be present at all criminal proceedings and a motion to disclose any deal's made with state witnesses.

On December 5, 2005, Petitioner filed a pro se motion for default. On February 9, 2006, Petitioner filed a pro se motion that requested judicial notice of

adjudicative facts and evidence filed. On May 23, 2006, Petitioner filed a pro se motion of the Sixth Amendment right of assistance of counsel. Petitioner was continuously forced to file pro se motions as assigned counsel refused to meet with him and discuss his case.

### Trial

On June 20, 2006, the trial commenced in the Circuit Court of Green County, Missouri.

Nicholas Ray Gamblin testified he and Petitioner became friends in 2004 and they never had any problems. (T-561-63). Gamblin was also friends with Richard Stacey, and considered him “family.” (T-563). In early August, Petitioner introduced Gamblin to Bobby Wilson, a couple of weeks before he was killed. (T-564). The times Gamblin saw Petitioner and Wilson together they got along well. (T-565).

During the summer of 2004, people would come to Gamblin’s house to use marijuana and methamphetamines. (T-573-75). Gamblin was on probation, but used and sold drugs for Petitioner. (T-570).

On August 21, 2004, Gamblin and his girlfriend, Diana Hall, came home around 3:00 a.m. from visiting her cousin. (T-581). Petitioner had stayed the previous night and woke up at approximately 11:00 a.m. (T-582). Shortly thereafter, Wilson arrived with a large quantity of marijuana. (T-583). Petitioner, his girlfriend, Amanda Smith, Wilson, and Gamblin started smoking marijuana,

and decided to take a drive around in Hall's vehicle to enjoy the weather, and listen to music. (T-567, 584-85). At approximately 2:30 p.m., they left the house and Hall stayed home. (T-585).

Wilson wanted to try to sell some of the marijuana he had brought with him. (T-587). The group stopped at a house in Fantastic Caverns, Petitioner and Gamblin went inside, leaving Smith and Wilson in the car. (T-588, 591). After a few minutes Petitioner and Gamblin left, and Petitioner returned the marijuana to Wilson. (T-596). The group continued to drive around smoking marijuana and Gamblin decided to go to his friend Matt Fraser's trailer to try and sell him some of Wilson's marijuana, but he was not interested. (T-598). Petitioner did not know Fraser. (T-652).

After they left Fraser's, Gamblin got lost trying a shortcut to the highway. (T-600). Gamblin turned around, and Petitioner told him to pull over because he had to urinate. (T-601). Gamblin got out the driver's door and walked across the road while Petitioner and Wilson got out and stood near the open car doors. (T-602). Suddenly Gamblin heard a gunshot and saw Wilson lying in a ditch. (T-603, 607). Allegedly, Petitioner walked around the back of the car, told Gamblin to move over, and said "sorry, I had to do it." (T-603). Petitioner warned Gamblin to keep his mouth shut and Gamblin saw a black .40 caliber, "kind of small" gun. (T-603, 610). Gamblin was unaware Petitioner had a gun on him, but he had seen it a few days before at his house. (T-603).

According to Gamblin, Petitioner told him and Smith he was sorry, but he thought Wilson was a snitch. (T-611). Petitioner then drove back to Fraser's trailer, wrapped the gun in a bandana, and asked Fraser to hold the gun for him, saying he would be back to get it and giving him a bit of marijuana. (T-619-620). Gamblin admitted that Fraser did not know Petitioner. (T-655). But when Petitioner asked Fraser to hold the gun, he did not ask any questions. Id. The group then drove back to Crutcher Street. (T-621).

When the group arrived at Crutcher Street, Petitioner told Smith to see if there was any blood on the car. (T-622). Gamblin went to bed, but decided to talk to Richard Stacey since Gamblin considered him "like a brother." (T-623). Gamblin and Diana Hall met Stacey at Casey's bar. (T-625). Chris Ackfeld was with Stacey. (T-625). Gamblin told Stacey that something really bad happened, and he should talk to Petitioner. (T-625-26).

Gamblin could not remember whether Stacey or Petitioner told him to take the car to Chris Ackfield's detail shop, "Big Willie's." (T- 632-633). When Ackfield heard the whole story, he told Gamblin to get the car out of his place. (T- 633). Gamblin was told to take the car to Jason Land's. (T- 633). He drove it to Land's on August 23, 2004 and Hall followed in his truck. (T- 635). Chris Ackfield was never called as a witness.

On August 24, 2004, Gamblin was arrested. (T- 636). He initially requested an attorney, but later changed his mind and contacted detectives to give a

statement. (T-636-37). Gamblin's statement was videotaped and the State was permitted to play the entire interview after Gamblin's in-court testimony. (T-731). Gamblin was released after giving police consent to search the Crutcher Street residence. (T- 637). He was rearrested a day or two later (T- 636).

Sarena Hart testified she lived near Fantastic Caverns, and one day Petitioner and Gamblin came to her home unexpectedly. (T-688). Chris Melton was there.

Id. After a few minutes, Petitioner started to leave and asked Hart to stay in the house because his girlfriend was in the car. (T-699). She refused and saw Wilson and Smith sitting in the car. (T-700).

Richard Stacey testified he had known Petitioner for more than ten years but they had lost contact with one another sometime around 2002. (T-512). Stacey also knew Wilson but had only met him a couple of months before his death. (T-510).

Stacey had been arrested in October 2003 for possession of drugs with intent to distribute and soon thereafter became a paid informant for the Springfield Police Department. (T-515). At the time of trial, his case was still pending. (T-518). He had provided information on Gamblin's drug sales. (T-520-21). Stacey claimed that four days before Wilson's death, Petitioner had told him that Wilson was cooperating with the police. (T-524). According to Stacey, Petitioner always carried either a .38 Derringer or a .40 caliber semi-automatic. Id.

After Stacey met with Gamblin at Casey's Bar, he drove to Crutcher Street. (T-527). Stacey and Petitioner were alone when Stacey asked Petitioner what happened, and claimed Petitioner told him that he popped Wilson in the back of the head. (T-528). Later, Stacey, Petitioner, and Gamblin were sitting in Petitioner's truck and he said he shot Wilson in the back of the head because he thought he was an informant. (T-531). Stacey could not remember whether Petitioner or Gamblin told him they found the shell casing and picked it up. (T- 535). One of them also told Stacey they dropped the gun off, but did not say where. Id. The police instructed Stacey to find the gun, and he called Gamblin who told him to call Mariah because it was at her sister's trailer. (T-539).

Dr. Paul Spence, Greene County Medical Examiner, testified that the cause of Wilson's death was a gunshot wound to the head. (T-497). The bullet entered the back of his head and exited through his forehead. (T-478, 485). The shot was taken from at least two or three feet away and death was instantaneous. (T-481, 495, 499). Marijuana and cocaine were found in Wilson's system, which would have required ingestion 15 or 20 minutes before his death. (T- 496).

Narcotics Officer Curt Ringgold testified that on August 22, 2004 he was contacted by Stacey who stated he could provide information on a homicide in Greene County. (T-448). Stacey wore a wire and arranged to meet Gamblin at Casey's bar. (T-451). Ringgold testified that after listening to Stacey and



Gamblin's conversation, nothing was said that incriminated either man in the murder of Wilson. (T-454).

Greene County Detective Mark Hall testified that on August 22, 2004 he contacted Diane Hall and asked her help in locating the car. (T-418). She took the police to Steven Land's property in Fair Grove. (T-419). Land consented to a search of his property, and the car was found hidden in a wooded area. (T-420). Hall prepared the paperwork to have Gamblin arrested for felony tampering with physical evidence. (T-422).

Greene County Detective Rick Mayo testified he contacted Matt Fraser who told him the gun was at his boss' trailer. (T-798). Once at the trailer, Fraser pointed to a yellow and black backpack. (T-800). Inside was a .40-caliber S&W Taurus semiautomatic wrapped in a blue and white bandana. (T-801, 807). There were eight hollow point bullets in the magazine, none in the chamber. (T-810). The magazine could hold ten bullets. Id.

Greene County Detective Frank Duren testified that ten days later, the police went back to the scene and found a shell casing that matched the S & W Taurus .40-caliber semiautomatic. (T-845, 859).

Petitioner was arrested on August 21, 2004 at 847 Crutcher Street in Springfield, Missouri. (T-837).

Greene County Detective Jim Stanley testified upon a search of the residence, the police found a cash box containing various types of ammunition, including one .40 bullet, and a nylon holster. (T-895, 889-90, 898).

Petitioner's motion for judgment of acquittal and the close of the State's case was denied. (T-968). The defense called Diana Hall. (T-976). Petitioner did not testify.

Diana Hall testified she was Gamblin's girlfriend in the summer of 2004. Id. On August 21, 2004, Gamblin borrowed her car at approximately 4:00 p.m. (T-977). Prior to that she had not seen Wilson at the house. Id. Gamblin, Petitioner, and Smith returned to the house between 7:00 p.m. and 8:00 p.m. (T-978). Approximately an hour later, Stacey arrived. Id. She had previously seen Petitioner with a gun, but it was silver, she had never seen him with a black gun. (T-990, 997).

Throughout the trial, Petitioner made several offers of proof to the effect that on August 21, 2004 Wilson had stolen the marijuana he had from a man named Chris Kroll and Kroll had called Wilson's sister, Diane Wilson, looking for him. (T-458, 462, 679, 971).

Petitioner's motion for judgment of acquittal at the close of all of the evidence was overruled. (T-998). The court refused Petitioner's tendered instructions for the lesser included offenses of murder in the second degree and involuntary manslaughter. (T-1015).

On June 23, 2006 the jury returned a verdict of guilty of murder in the first degree. (T-1060).

Prior to a ruling on Petitioner's motion for new trial, defense counsel informed the court that Petitioner had received a telephone call from, Sara Coleman, who knew one of the jurors, Adam [Wittenberger]. (T-1061). Coleman worked with Wittenberger at the Olive Garden Restaurant. (T-1066). Wittenberger told Coleman that the jury found Petitioner guilty because the trial judge had told them that he had confessed. Id. Petitioner asked for a continuance to investigate. (T-1067).

The court stated the following:

Well, I don't know-- I know that when I talked to the jurors -- and I can't remember if I because there were -- we were doing two cases about this time, but I know that no time in my career as a judge prior to a jury returning a verdict would I ever talk to them about any evidence or anything in the case, so I don't remember ever talking to this jury prior to the verdict about any evidence or any statements made by your client.

(T- 1067).

Counsel informed the court that he had been told about this in a telephone call the night before. (T-1069). No ruling was made on Petitioner's request for additional time to investigate the claim.

Petitioner's motion for new trial was overruled, and he was sentenced to life imprisonment with no possibility for probation or parole. (T-1070, 1073).

Petitioner was given leave to appeal in forma pauperis. A Notice of Appeal was timely filed.

On July 31, 2006, Petitioner appealed his conviction of murder in the first degree, in the Missouri Court of Appeals, Southern District. The Missouri Court of Appeals affirmed the judgment on April 22, 2008.

On July 23, 2008, Petitioner filed a Rule 29.15 motion for post-conviction relief in the Greene County Circuit Court. The Greene County Circuit Court denied the motion on October 1, 2009.

On June 10, 2011, petitioner filed a, pro se, 2254 petition for Writ of Habeas Corpus in the United States District Court in the Western District of Missouri (Springfield), docket # 6:11-cv-03209-RED. On February 28, 2012, the United States District Court in the Western District of Missouri (Springfield) denied the 2254 petition, dismissed with prejudice, and denied the issuance of a certificate of appealability.

On November 21, 2013, petitioner filed a, pro se, petition for a Writ of Habeas Corpus in the Missouri Court of Appeals, docket # 13TE-CC00484. On May 13, 2014, the Missouri Court of Appeals denied the Writ of Habeas Corpus.

A formal charging document has never been filed to date.

### **ARGUMENT AND CITATIONS OF AUTHORITY**

To show an application for a second or successive habeas corpus should issue under 28 U.S.C. § 2244, Campbell need only make a prima facia showing that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense. See 28 U.S.C. § 2244.

Here, Petitioner’s Due Process right to be informed of the charges against him in order to adequately prepare a defense were violated.

*A. Whether Petitioner’s Due Process Rights Were Violated When the State Failed to File a Formal Charging Document*

Article I, § 17 of the Missouri Constitution provides that no one may be prosecuted for a felony “otherwise than by indictment or information.” Under Missouri's criminal procedure rules, a complaint must eventually be followed with the filing of an information to continue the prosecution. See Mo. R. Crim. P. 23.03; See State v. Hibler, 5 S.W.3d 147, 150 (Mo. 1999) (holding that the information or indictment puts the defendant on notice for “due process purposes” of all offenses charged); U.S. v. Tye, 519 F.2d 586 (10th Cir. 1975) (Basic purpose

of an indictment or information is to clearly apprise defendant of the charges and what he must be prepared to meet)). Unless the time for filing is extended by the court for good cause shown, “[a]n information charging a felony shall be filed not later than ten days after the date of the order requiring the defendant to answer to the charge.” Mo. R. Crim. P. 23.03.

Further, it is “elemental in [Missouri] law that a defendant must be put on trial for a specific offense and convicted or acquitted of that offense.” State v. Reichenbacher, 673 S.W.2d 837, 838 (Mo. Ct. App. 1984) (citing State v. Thompson, 392 S.W.2d 617 (Mo. 1965); State v. Billingsley, 465 S.W.2d 569 (Mo. 1971); see also U.S. v. Mignon, 103 F.Supp. 20 (E.D. Pa. 1952) (Defendants could not be convicted of a crime for which they were not indicted.); United States v. Russo, 155 F. Supp. 251 (D. Mass. 1957) (Validity of an indictment is basic to any criminal conviction.)).

Missouri law allows “criminal proceedings [to] be initiated by filing a complaint in any court having original jurisdiction or by indictment.” Vaughn v. State, 763 S.W.2d 232, 236 (Mo. Ct. App. 1988) (citing State v. Thomas, 674 S.W.2d 131, 135 (Mo. App. 1984). The filing of the complaint only constitutes “the first step in the information proceeding.” Id.; State v. Rhodes, 591 S.W.2d 174, 175-76 (Mo. Ct. App. 1979) (The “[complaint] is...not a part of the information, but a step directed to be taken in aid of it.”).

The filing of a complaint does not constitute a criminal prosecution, but it is the first step in instituting a criminal charge. The purposes of a complaint or affidavit ‘are to advise accused of the charge against him and to enable the committing magistrate to determine whether or not accused should be bound over to stand trial for the offense.’ The actual charge in the case at bar occurred when the information was filed.

Vaughn v. State, 763 S.W.2d 232, 236 (Mo. Ct. App. 1988) (internal citations omitted).

However, Missouri Supreme Court held in State v. Parkhurst, that:

Cases stating that jurisdiction is dependent upon the sufficiency of the indictment or information mix separate questions. That language in Mongtomery, Gilmore, Brooks and other cases should not be relied on in the future. Equally inaccurate is the statement in at least one case that absence of an information deprives the trial court of jurisdiction over the person...[and] it is not to be followed.

845 S.W.2d 31, 35 (Mo. 1992).

Instead of being a jurisdictional issue, it is a matter of due process that “requires that a defendant may not be convicted of an offense not charged in the information or indictment.” State v. Hibler, 5 S.W.3d 147, 150 (Mo. 1999); Cf. U.S. v. Macklin, 523 F.2d 193 (2d Cir. 1975) (Absence of an indictment is a jurisdictional defect which deprives the court of its power to act, and such defect cannot be waived by a defendant, even by a plea of guilty.); Cf. Colson v. Smith, 315 F.Supp. 179 (N.D. Ga. 1970) (Where indictment is required for institution of criminal proceedings, lack of indictment goes to the court's jurisdiction.)).

Therefore pursuant to Missouri Criminal Procedure Rule 24.04(b)(2), the defense of lack of jurisdiction or the failure of the indictment or information to charge an offense is not waived if not raised by motion with the trial court. State v. Hicks, 221 S.W.3d 497, 502 (Mo. Ct. App. 2007); White v. Hunter, 76 F.Supp. 954 (D. Kan. 1948) (Where waiver of right to be prosecuted by indictment and consent to prosecution by information was not made in open court, sentence was illegal, but accused was not entitled to be set at large at once and would be remitted to court wherein he was sentenced for further action.)).

By law, felonies in Missouri are required to be prosecuted by indictment or information. Id.; Mo. Const. art. I, § 17; § 545.010. The indictment or information must be “in writing, signed by the prosecuting attorney, and filed in the court having jurisdiction of the offense.” Id.; Rule 23.01(a). The indictment or information is required to state the name of the defendant, the facts constituting the elements of the offense charged, the date and place of the offense charged, the statute allegedly violated and the statutes fixing the penalty or punishment, and the name and degree of the offense charged. Id.; Rule 23.01(b).

However, an indictment or information will not be deemed insufficient unless: “(1) it does not by any reasonable construction charge the offense of which the defendant was convicted or (2) the substantial rights of the defendant to prepare a defense and plead former jeopardy in the event of acquittal are prejudiced.” Id. at 503. (citing State v. Parkhurst, 845 S.W.2d at 35.) The second test “is to give



defendant sufficient notice of the charge to allow adequate preparation of a defense and avoid retrial on the same charges in case of acquittal.” Id. (citing State v. Taylor, 929 S.W.2d 209, 218 (Mo. 1996); see State v. Angle, 146 S.W.3d 4, 10 (Mo. App. 2004) (“The test for sufficiency is whether the information contains all essential elements of the offense and clearly apprises the defendant of the facts constituting the offense.”); Blake v. Morford, 563 F.2d 248 (6th Cir. 1977) (Sufficiency of indictment does not raise constitutional issue cognizable in habeas corpus when notice given in indictment fairly but imperfectly apprises accused of offense for which he is to be tried, but constitutional violation occurs when accused is not given proper notice in indictment of offense for which he is to be tried.)).

In this case, no information or indictment was ever formally filed, which denied Petitioner of his due process rights. This due process violation is apparent on its face and clearly was never waived by the Petitioner. Even if the Petitioner had somehow acquiesced to waive his right to challenge the complete lack of a charging document that would have adequately apprised him of the charges against him, it is of no merit as such waiver must be made by motion to the trial court. Although, a complaint was filed in his case that presumptively alerted Petitioner to the charges he faced, the State failed to formally charge Petitioner that resulted in his inability to adequately prepare a defense. Therefore, a result of his not being effectively charged with the felony of which he was convicted, his conviction cannot stand.

Finally, Petitioner could not have previously discovered the factual predicate for the State's failure to file a formal charging document for several reasons. First, the Petitioner was incarcerated and held without bond during the pendency of the proceedings, his communication with the outside world was extremely limited, trial counsel only met with him three times before his trial commenced, he was and is untrained in the law, and like any other person he relied upon his attorney to advance his cause. Instead, Petitioner was forced to file eleven pro se motions during the pendency of the proceedings; three of which addressed conflicts of interest, dismissal of counsel, and his Sixth Amendment right to assistance of counsel. Even when the court ordered counsel to meet with Petitioner to address the pro se issues, counsel refused. Petitioner unfortunately was just not sophisticated enough to question this constitutional requirement considering he was formally arraigned, and counsel utterly failed to confirm the information had been filed. Viewed in light of the evidence as a whole, by clear and convincing evidence, but for the State's failure to file a formal charging document, no reasonable factfinder would have found the Petitioner guilty of the underlying offense, as there was no basis to conduct a trial, impose conviction, or punishment when the Petitioner was denied his due process rights.

### **CONCLUSION**

Petitioner was denied his fundamental Constitutional Due Process right to be informed of the charges against him in order to adequately prepare a defense. Had

the court provided the Petitioner this fundamental right, there would not have been a trial, or in the least he would have been able to adequately prepare defenses that would have resulted in a different outcome at trial.

WHEREFORE, Petitioner, Lucas Campbell, prays this Court will grant this request for permission to file a second or successive petition for writ of habeas corpus; and all other relief this Court deems necessary and just.

Dated: Orlando, Florida  
May 15, 2015

Respectfully Submitted,

/s/ Jaime T. Halscott

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15th day of May 2015, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF System and the parties listed below:

Missouri Attorney General's Office-JC  
P.O. Box 899  
Jefferson City, MO 65102

*/s/ Jaime T. Halscott*  
Jaime T. Halscott, Esq.