

Case no. SC90542

---

IN THE MISSOURI SUPREME COURT

---

STATE EX REL.  
DWIGHT LAUGHLIN,

*Petitioner,*

v.

MICHAEL BOWERSOX, Warden,

*Respondent.*

---

Original Proceeding in Habeas Corpus

---

RESPONDENT'S STATEMENT, BRIEF, AND ARGUMENT

---

CHRIS KOSTER  
Attorney General

ANDREW W. HASSELL  
Assistant Attorney General  
Missouri Bar No. 53346

P. O. Box 899  
Jefferson City, MO 65102-0899  
(573) 751-3321 Telephone  
(573) 751-3825 Facsimile

*Attorneys for Respondent*

## Table Of Contents

Table Of Authorities .....	2
Statement of Facts.....	4
I.    The crime.....	4
II.   Laughlin raised his claim in his Rule 29.15 motion .....	5
Argument .....	7
I.    Laughlin’s claim is an improper successive claim .....	7
II.   The circuit court had jurisdiction to try Laughlin .....	9
A.    Laughlin demonstrated the intent to commit the crime while in the State of Missouri .....	10
B.    The results of Laughlin’s crime occurred in the State of Missouri .....	12
C.    Laughlin’s conduct in Missouri constituted an attempt to commit burglary .....	14
Conclusion.....	21
Certificate Of Compliance And Service .....	22

## Table Of Authorities

### Cases

<i>Brown v. State</i> , 66 S.W.3d 721 (Mo. 2002) .....	7
<i>Commonwealth v. Melnychenko</i> , 619 A.2d 719 (Pa. Super. Ct. 1993) ...	18
<i>Hankins v. State</i> , 766 S.W.2d 467 (Mo.App. S.D. 1989) .....	10
<i>John Deere Co. v. Jeff Dewitt Auction Co.</i> , 690 S.W.2d 511 (Mo.App. S.D. 1985).....	16
<i>Matter of Nocita</i> , 914 S.W.2d 358 (Mo. 1996) .....	16
<i>People v. Jiles</i> , 845 N.E.2d 944 (Ill. Ct. App. 2006) .....	18
<i>State ex rel. Nixon v. Jaynes</i> , 63 S.W.3d 210 (Mo. 2001) .....	8
<i>State ex rel. Simmons v. White</i> , 866 S.W.2d 443 (Mo. 1993) .....	7, 8, 9
<i>State v. Anderson</i> , 515 S.W.2d 534 (Mo. 1974) .....	16
<i>State v. Laughlin</i> , 900 S.W.2d 662 (Mo. App. S.D. 1995) .....	4, 5, 6, 7, 11
<i>State v. Molasky</i> , 765 S.W.2d 597 (Mo. 1989) .....	16, 17
<i>State v. West</i> , 571 P.2d 237 (Wash. Ct. App. 1977) .....	17
<i>United States v. Heard</i> , 270 F.Supp. 198 (W.D.Mo. 1967) .....	10

### Statutes

18 U.S.C. §2115.....	14
Kan. Stat. Ann. §21.3104(1)(c) (2008).....	20

Mo.Rev.Stat. §12.010 (2000) .....	10
Mo.Rev.Stat. §12.020 (2000) .....	10
Mo.Rev.Stat. §541.191.1 (Supp. 1988).....	10, 12
Mo.Rev.Stat. §541.191.3 (Supp. 1988).....	14, 20
Mo.Rev.Stat. §564.011.1 (2000) .....	14, 16, 17
Mo.Rev.Stat. §569.100.1 (1986) .....	11
Mo.Rev.Stat. §569.160.1 (1986) .....	11
<b>Books and Treatises</b>	
Model Penal Code §5.01 (1985).....	17

## Statement of Facts

### I. The crime

Dwight Laughlin is currently serving an aggregate forty-year sentence for his convictions for first-degree burglary and first-degree property damage. *State v. Laughlin*, 900 S.W.2d 662, 664 (Mo. App. S.D. 1995). Laughlin burglarized the United States Post Office in Neosho, Missouri. *Id.* at 665.

Neosho police officer Randy Sweet responded when the post office alarm went off about 9:00 PM on February 23, 2003. *Id.* Officer Sweet found that the post office was secure. *Id.* A few minutes later, Laughlin tripped the alarm a second time. *Id.* Neosho officers Jim Basinger and Tim Bender then went to the post office. *Id.* The officers found that the a window was ajar and that the grill behind that window was loose. *Id.*

Officer Bender then moved to the front of the post office and saw Laughlin “hanging off the ledge.” 900 S.W.2d at 664. Laughlin ignored Officer Bender’s instructions to stop and climbed up on the roof. *Id.* Laughlin went to the west side of the building, where Officer Basinger saw him “peeking over the edge.” *Id.*

Deputy Sheriff Mike Smith, his police dog, and a third Neosho police officer entered the post office through the open window. *Id.* After three warnings to Laughlin to come out, Deputy Smith released the dog. *Id.* The police eventually found Laughlin lying on some pipes in the basement. *Id.* Laughlin was wearing dark clothing including blue jeans, tennis shoes, and a blue flannel shirt, and a black ball cap. Trial Tr. 114. They found no one else in the building. 900 S.W.2d at 664.

On the roof, the police found multiple tools used in the burglary including a “scanner” set to the Neosho Police frequency, a flashlight, a crowbar. *Id.* Alongside these burglary tools, they found a plastic bag with pieces of mail containing credit cards as well as a paper bag containing money and stamps. *Id.* The police also found that Laughlin had removed the combination dial from the safe and opened the safe. *Id.* The police found a crowbar, a pipe wrench, three screwdrivers, a hammer, and a metal punch in front of the safe. *Id.*

## **II. Laughlin raised his claim in his Rule 29.15 motion**

In his Rule 29.15 motion, Laughlin argued that “the trial court did not have jurisdiction to try [Laughlin]’s case since it was a federal offense thereby preempting state court jurisdiction.” Resp. Add. A7. The

Newton County Circuit Court denied this claim because Laughlin failed to present any evidence that his crime “was not a state offense or that the federal government had preempted jurisdiction.” Resp. Add. A17, A19. Laughlin did not raise this claim in his consolidated appeal. 900 S.W.2d at 668.

## Argument

### I. Laughlin's claim is an improper successive claim

Laughlin argues that the trial court lacked jurisdiction over his case because he burglarized a federal post office and the State lacked jurisdiction over that post office. Laughlin raised this claim in his Rule 29.15 petition. Resp. Add. A7 The Newton County Circuit Court denied it on its merits. Resp. Add. A17, A19. Laughlin did not raise that claim in his Rule 29.15 appeal. 900 S.W.2d at 668. This Court has explicitly held that state habeas corpus under Rule 91 does not allow for successive claims. *State ex rel. Simmons v. White*, 866 S.W.2d 443, 446 (Mo. 1993). Thus, Laughlin cannot relitigate his claim in this action.

Laughlin argues in his brief that he can raise this claim because it is a jurisdictional claim and jurisdictional claims may be raised at any time. Pet. Brief 15-16. He is wrong. Respondent does not contest that jurisdictional claims may be raised for the first time in a habeas petition. *Brown v. State*, 66 S.W.3d 721, 731 (Mo. 2002). That point is well settled. However, successive claims are prohibited. This Court explicitly stated that direct appeal, post-conviction actions under Rule 24.035 and 29.15, and habeas corpus were not “designed for duplicative

and unending challenges to the finality of a judgment.” 866 S.W.2d at 446. Laughlin seeks to raise such a duplicative challenge here. He cannot do so. He raised it in the circuit court and had the opportunity to raise it on appeal. He therefore is bound by the circuit court’s decision.

Laughlin cites *Simmons* for the proposition that “habeas relief is available ‘to present jurisdictional issues’ regardless of whether those issues were raised on appeal or by post-conviction motion.” Pet. Br. 15, *quoting* 866 S.W.2d at 445 n.3. That statement severely distorts this Court’s holding in *Simmons* and ignores the legal concept of procedural default.

Procedural default occurs when a defendant fails to raise a claim on direct appeal or in a post-conviction action. *State ex rel. Nixon v. Jaynes*, 63 S.W.3d 210, 214 (Mo. 2001). This Court held in *Simmons* that defendants must raise challenged to their convictions and sentences “timely and in accordance with the procedures established for that purpose” because “to allow otherwise would result in a chaos of review unlimited in time, scope, and expense.” 866 S.W.2d at 446. An inmate who has procedurally defaulted his claims for relief is entitled only to “extremely limited” review. *Id.* This Court then set out the scope

of that limited review: “habeas corpus may be used to challenge a final judgment after an individual’s failure to pursue appellate and post-conviction remedies *only* to raise [among other things] jurisdictional issues.” 866 S.W.2d at 446.

The issue of the circuit court’s jurisdiction therefore becomes relevant only when a defendant has failed to raise the claim previously. A showing of a jurisdictional defect overcomes the procedural default and allows for merits consideration of a defendant’s claim.

The situation in this case is completely inapposite. Laughlin raised his jurisdictional claim in his Rule 29.15 motion. The circuit court denied it. Laughlin chose not to pursue that claim on appeal. He cannot now announce that his claim is jurisdictional and thus be entitled to the appeal he refused previously: “habeas corpus is not a substitute for appeal.” *Id.*

Therefore, this Court should hold that Laughlin cannot pursue his successive claim in habeas corpus.

## **II. The circuit court had jurisdiction to try Laughlin**

Laughlin argues that the State of Missouri lacked jurisdiction to try him because only the federal government has jurisdiction over the

post office that he burglarized. The General Assembly, however, has granted jurisdiction to circuit courts to try certain crimes that occurred outside of the State of Missouri.<sup>1</sup> The circuit court had jurisdiction over this case.

**A. Laughlin demonstrated the intent to commit the crime while he was in the State of Missouri**

The General Assembly explicitly established that “this state has jurisdiction over an offense that a person commits by his own conduct ... if ... conduct constituting any element of the offense ... occurs within this state.” Mo.Rev.Stat. §541.191.1 (Supp. 1988). One of the elements of both first-degree burglary and first-degree property damage is the

---

<sup>1</sup> Respondent concedes that the post office is under the exclusive jurisdiction of the federal government. The federal government bought the property in 1933. Pet. App. A9. For lands purchased prior to February 1, 1940, the United States is presumed to have accepted jurisdiction. *United States v. Heard*, 270 F.Supp. 198, 200 (W.D.Mo. 1967); *Hankins v. State*, 766 S.W.2d 467, 469 (Mo.App. S.D. 1989); Mo.Rev.Stat. §12.010 (2000); Mo.Rev.Stat. §12.020 (2000). There is no evidence to rebut that presumption in this case.

scienter requirement of “knowingly.” Mo.Rev.Stat. §§569.100.1 and 569.160.1 (1986).

Laughlin formed the scienter requirement while he was outside the post office. The federal post office here is part of a city block in Neosho, Missouri. The small post office is completely surrounded by the State of Missouri. Thus, in order to burglarize at the post office, Laughlin passed through the State of Missouri with all of the instrumentalities he needed for the burglary and the property damage. After the police arrested Laughlin, they found all of the equipment that he used in the crimes: a police scanner monitoring the Neosho Police frequency, a flashlight, two crowbars, a pipe wrench, three screwdrivers, a hammer, and a metal punch. 900 S.W.2d at 665. A law-abiding person would have all of these items on his person at 9:00 PM on a winter night in downtown Neosho.

Prior to the burglary, Laughlin gathered all of these tools, planned the burglary, and took all of the burglary tools to downtown Neosho. He then carried all the burglary tools to the post office property line. All of these events occurred in the State of Missouri. Laughlin then crossed the property line, went a very short distance to the building, and forced

open the window. His actions of obtaining the burglary and property damage tools, bringing them to the crime scene, and stopping right outside the post office all occurred in the State of Missouri. Those actions demonstrate Laughlin's intent to burglarize the post office and forcibly open the safe. The burglary and property damage immediately followed, and were intimately connected with, Laughlin's actions in the State of Missouri. Laughlin therefore developed the necessary intent in the State of Missouri.

Laughlin's intent to commit the burglary and property damage at issue is further demonstrated by the fact that he actually committed the crimes. He developed that intent within the State of Missouri. The circuit court had jurisdiction under §541.191.1.

**B. The results of Laughlin's crime occurred in the State of Missouri**

The General Assembly also allows for jurisdiction when "this state has jurisdiction over an offense that a person commits by his own conduct ... if ... a result of [the defendant's] conduct occurs within this state." §541.191.1.

Laughlin's crime caused several results in the State of Missouri. He twice tripped the alarm in the post office. *Id.* As a result, at least four Neosho police officers, a deputy sheriff, and a police dog came to the post office and eventually found and arrested Laughlin. *Id.* The officers had to surround the post office, use a canine unit, and follow Laughlin inside because Laughlin refused to surrender. *Id.* The effort by Missouri peace officers took place, to a large extent, outside the post office and inside the State of Missouri. Therefore, the circuit court had jurisdiction under §541.191.1.

Further, the primary community threatened by Laughlin's criminal activities was the city of Neosho and McDonald County. He attempted to steal (and presumably would have used) a credit card belonging to a Neosho resident. Trial Tr. 140. That result would have affected the State of Missouri. Also, the post office at issue here is a small building in the middle of downtown Neosho. It is not part of a larger federal complex nor is it surrounded by other federal buildings or offices. The effects of the burglary (repair of the window and the safe) were borne by the residents of Neosho and McDonald County. Those residents were (and are) the reason that the post office existed in

Neosho. Thus, the results of Laughlin's illegal actions primarily affected residents of this State. The circuit court therefore had jurisdiction over the crime.

**C. Laughlin's conduct in Missouri constituted an attempt to commit burglary**

Section §541.191.3 provides that "this state has jurisdiction over an offense ... if ... the conduct within this state constitutes an attempt ... to commit ... an offense in another jurisdiction that is also an offense under the law of this state."

Burglary of a post office is an offense under the United States Code. 18 U.S.C. §2115. That statute makes it a crime to "forcibly break[] into ... any post office ... with intent to commit ... any larceny or other depredation [within the post office]." Missouri's burglary statute, §569.160.1, criminalizes unlawfully entering a building for the purpose of committing a crime inside that building. Section 569.160 encompasses the same conduct that the federal statute prohibits.

An attempt under Missouri law requires an "act which is a substantial step towards the commission of the offense." Mo.Rev.Stat. §564.011.1 (2000). A "substantial step" is "conduct which is strongly

corroborative of the firmness of the actor's purpose to complete the commission of the offense." *Id.*

Here, Laughlin went to the Neosho post office at night with a wide variety of burglary tools. He was wearing dark-colored clothing. He selected the post office window farthest from the street and public view. The post office window that he forced open was within steps of the jurisdiction of the State of Missouri. Thus, Laughlin did everything necessary to prepare for the burglary within the State of Missouri's jurisdiction except for forcing the window open. A reasonable juror could find that going to a post office at night dressed in dark-colored clothes, selecting the window most hidden from public view, and carrying two crowbars, a police scanner, a flashlight, a pipe wrench, a metal punch, and screwdrivers is a "substantial step" towards burglarizing the post office and breaking open the safe inside.

A crucial point in this case is the fact that Laughlin carried out the burglary and property damage. He carried out his criminal plans. The fact that he completed his crimes demonstrates his intent to commit the burglary and the property damage. It shows "the firmness of

the [Laughlin]’s purpose to complete the commission of the offense” and thus satisfies §564.011.

Further, §564.011 is patterned after §5.01 of the Model Penal Code. *State v. Molasky*, 765 S.W.2d 597, 600 (Mo. 1989). “When ‘construing uniform and model acts enacted by the General Assembly, [this Court] must assume” that the General Assembly “did so with the intention of adopting the accompanying interpretations placed thereon by the drafters of the model or uniform act.” *Matter of Nocita*, 914 S.W.2d 358, 359 (Mo. 1996), *quoting John Deere Co. v. Jeff Dewitt Auction Co.*, 690 S.W.2d 511, 514 (Mo.App. S.D. 1985). This Court expressly held in *State v. Anderson*, 515 S.W.2d 534, 539 (Mo. 1974) that when the General Assembly enacted another section of the Model Penal Code as §552.030.3, the General Assembly “adopted the interpretation placed thereon in the commentary by the drafters of the model act.” Therefore, the comments concerning this section of the Model Penal Code are of the utmost importance here.

Both the Modal Penal Code and the Comment to §564.011 list several types of conduct that “shall not be held insufficient as a matter of law” “if strongly corroborative of the actor’s criminal purpose.” Model

Penal Code §5.01 (1985); §564.011; 765 S.W.2d at 601. One of those actions is

possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances.

*Id.* Here, Laughlin collected very near to the scene of the crime a wide variety of burglary tools, a police scanner, and dark clothing. This collection of burglary supplies, taken as a whole, did not serve any legal purpose at 9:00 PM on a February night immediately outside the closed post office in downtown Neosho.

Missouri courts have not addressed this precise issue. Other states that have adopted the Model Penal Code, however, have done so. The Washington Court of Appeals, for example, held that “a substantial step toward committing a burglary may be made without necessarily committing a criminal trespass.” *State v. West*, 571 P.2d 237, 239 (Wash. Ct. App. 1977). There, the defendants were caught using a crowbar to try to force their way into a supermarket. *Id.* at 690. The

only difference between that case and this case is that Laughlin was did not force the window open until after he went onto the post office's property. That difference, coupled with Laughlin's large supply of burglary tools and his ability to track the police response, is inconsequential in this case.

The Appellate Court of Illinois reached a similar conclusion. The court held that "a defendant who is equipped for a burglary and is reconnoitering possible targets may be guilty of attempted burglary even where, as here, he made no attempt to enter any structure." *People v. Jiles*, 845 N.E.2d 944, 957 (Ill. Ct. App. 2006). There, the defendant, in addition to reconnoitering a house at 3:00 AM, "wore dark clothing and possessed a screwdriver, latex gloves, and a flashlight-useful materials for a nighttime burglary." *Id.* at 956. Here, Laughlin had even more burglary supplies, similar dark clothing, and was out at 9:00 PM—long after the post office closed.

The decision in *Commonwealth v. Melnychenko*, 619 A.2d 719, 721 (Pa. Super. Ct. 1993) is similarly on point. There, the court held that "reconnoitering the area both with the intent to burglarize a residence and with sufficient means to carry out his intent" was a

substantial step towards carrying out the burglary. The defendant in *Melnyczenko* was arrested in a back yard “dressed in dark clothing, and carrying a heavy gauge screwdriver, a ten-inch pry bar, two flashlights, a knit cap, and a pair of gloves” on a warm seventy-degree night. *Id.* at 720. The facts here, as stated in the previous two paragraphs, are equally as compelling.

Laughlin’s conduct in the State of Missouri constituted an attempt to commit both burglary and property damage. The circuit court therefore had jurisdiction to try him under §541.191.3.

A conclusion that Laughlin attempted to commit burglary also is sound policy. The facts here are novel: a burglary of a post office in a small Missouri town. The overall consequences of this case are much more far-reaching. For example, Kansas City, Kansas, and Kansas City, Missouri, as well as several of their suburbs, are separated by State Line Road. Under Laughlin’s theory of the case, Missouri police could not arrest, and Missouri courts would lack jurisdiction over, a person that police observed sneaking across State Line road in the middle of the night wearing a ski mask and carrying crowbars and empty sacks. Likewise, Kansas could not prosecute that person; Kansas law provides

that Kansas courts have jurisdiction when a person, “outside the state ... commits an act which constitutes an attempt to commit a crime within this state.” Kan. Stat. Ann. §21.3104(1)(c) (2008). Thus, a person wearing a ski mask and waving crowbars could not be convicted for burglary when he crosses from Missouri to Kansas.

That result is illogical. Under that theory, police would have to wait for a suspect to actually break into a house before arresting him. Police would have no incentive to stop criminals before their crimes because they could not arrest them. Thus, burglars and other criminals operating near the state line would have additional time to complete (or begin) their crimes. That result would put the citizens of this State and the citizens of Kansas at greater risk of theft or of violent crime. This Court should interpret §541.191.3 to preclude that illogical result and allow police to proactively protect the citizens of this State and other States by arresting criminals that are about to commit a burglary or another crime before the criminals do so.

## Conclusion

For these reasons, this Court should quash its preliminary writ.

Respectfully submitted,

CHRIS KOSTER  
Attorney General

/s/ Andrew W. Hassell  
ANDREW W. HASSELL  
Assistant Attorney General  
Missouri Bar No. 53346

P. O. Box 899  
Jefferson City, MO 65102  
(573) 751-3321  
(573) 751-3825 (fax)  
[andrew.hassell@ago.mo.gov](mailto:andrew.hassell@ago.mo.gov)

*Attorneys for Respondent*

## Certificate Of Compliance And Service

I hereby certify that the attached brief complies with the limitations contained in Rule 84.06(b) of the Supreme Court of Missouri and contains 3,513 words, excluding the cover and this certification, as determined by Microsoft Word 2003 software; that the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses, using Norton Anti-virus software, and is virus-free; and that a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, on April 21, 2010, to:

Ms. Ginger Gooch  
HUSCH BLACKWELL SANDERS LLP  
901 St. Louis Street, Suite 1800  
Springfield, Missouri 65806

/s/ Andrew W. Hassell  
ANDREW W. HASSELL  
Assistant Attorney General

## **Respondents' Addendum**

**Addendum Table of Contents**

Mo.Rev.Stat. §549.191 (2000) ..... A1

Mo.Rev.Stat. §564.011 (2000) ..... A3

Laughlin’s Amended Rule 29.15 Motion in case no. SC393-652CC  
(Newton County)..... A4

Judgment in case no. SC393-652CC (Newton County) ..... A17

**Missouri Revised Statute 541.191 (2000)**

1. This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which such person is legally accountable if:

(1) Conduct constituting any element of the offense or a result of such conduct occurs within this state; or

(2) The conduct outside this state constitutes an attempt or conspiracy to commit an offense within this state and an act in furtherance of the attempt or conspiracy occurs within this state;

or

(3) The conduct within this state constitutes an attempt, solicitation, conspiracy or facilitation to commit or establishes criminal accountability for the commission of an offense in another jurisdiction that is also an offense under the law of this state; or

(4) The offense consists of an omission to perform a duty imposed by the law of this state regardless of the location of the defendant at the time of the offense; and

(5) The offense is a violation of a statute of this state that prohibits conduct outside the state.

2. When the offense involves a homicide, either the death of the victim or the bodily impact causing death constitutes a result within the meaning of subdivision (1) of subsection 1 of this section. If the body of a homicide victim is found in this state it is presumed that the result occurred in this state.

3. This state includes the land and water and the air space above the land and water.

**Missouri Revised Statute §564.011 (2000)**

1. A person is guilty of attempt to commit an offense when, with the purpose of committing the offense, he does any act which is a substantial step towards the commission of the offense. A “substantial step” is conduct which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.

2. It is no defense to a prosecution under this section that the offense attempted was, under the actual attendant circumstances, factually or legally impossible of commission, if such offense could have been committed had the attendant circumstances been as the actor believed them to be.

3. Unless otherwise provided, an attempt to commit an offense is a:

(1) Class B felony if the offense attempted is a class A felony.

(2) Class C felony if the offense attempted is a class B felony.

(3) Class D felony if the offense attempted is a class C felony.

(4) Class A misdemeanor if the offense attempted is a class D felony.

(5) Class C misdemeanor if the offense attempted is a misdemeanor of any degree.