

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

STATE OF MISSOURI, )  
 )  
 Plaintiff, ) CV91-23437  
 )  
 vs. ) Division 12  
 )  
 KENNETH MIDDLETON, )  
 )  
 Defendant. )

DEFENDANT MIDDLETON'S AMENDED 29.15  
MOTION FOR POST TRIAL CORRECTION

Comes now Defendant Kenneth Middleton, by and through counsel, Gerald M. Handley, and for his Amended 29.15 Motion hereby states as follows:

1. Defendant was denied effective assistance of counsel and due process of law where Defendant's counsel failed to introduce evidence of Defendant Middleton's Medical Evaluation of February 12, 1990 which evidence would have rebutted a critical part of the prosecution's theory of prosecution viz. that the Defendant Middleton was suffering from a medical problem and was not faking a medical event so as to avoid questioning.

2. The failure of counsel to introduce evidence of Defendant's medical condition prior to and on the date of the homicide deprived the jury of the opportunity to be aware of substantial and material facts which would have countered the prosecution theory on the statements and actions of the Defendant on the date of the homicide.

3. The Defendant was denied effective assistance of counsel and due process of law where counsel failed to present

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evidence through testimony of the Defendant Middleton which testimony would have been dispositive on the Defendant's Suppression Motion as the testimony would have shown that actions taken by the police on the evening of the homicide were consistent with Defendant's theory that he was under arrest.

4. The Defendant was denied effective assistance of counsel and due process of law where counsel failed to advise Defendant Middleton that his testimony at the Suppression Hearing was excludable at trial thereby causing the Defendant Middleton to unknowingly forfeit his right to testify at the Suppression Hearing.

5. The Defendant was denied effective assistance of counsel and due process of law by trial counsel's failure to investigate, counsel and prepare expert testimony on two critical trial issues, viz. blood pattern evidence and ballistics, which testimony would have rebutted the testimony of the State's witnesses as to the results of tests conducted on the weapon and blood patter evidence and the Defendant Middleton was thereby prejudiced in that his Sixth Amendment right to a full and fair trial and effective representation therein was denied.

6. The Defendant was denied effective assistance of counsel and due process of law by failure of Defendant's counsel to investigate and document the condition of the crime scene prior to the date of the offense and after the date of

the offense. The failure to document the scene and call witnesses to testify as to the proximity of the telephone to the wall where there was blood residue, denied the Defendant the opportunity to present his theory of the case as it related to the position of the victim at the time of the shooting.

7. The sum effect of the errors by counsel's performance fell below an objective standard of reasonable competence and the deficient performance prejudiced the Defendant's defense.

8. The Defendant Middleton incorporates by reference those points raised in the Defendant Middleton's Pro Se 29.15 previously filed.

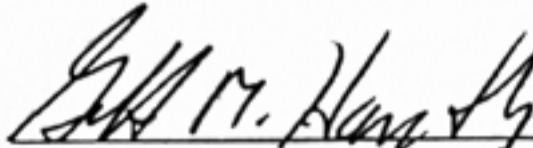
9. The Defendant Middleton hereby incorporates by reference those points raised in the Defendant Middleton's Pre-Trial Motions and Motion for New Trial and more specifically that the Defendant's conviction was obtained in violation of his rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 10, 17, 18a and 21 of the Missouri Constitution where the trial court failed to suppress statements made by Defendant to authorities on the grounds that Appellant was in custody and was not advised of his right to remain silent or to assistance of counsel.

WHEREFORE, Defendant Middleton respectfully moves this Court to vacate the conviction and sentence in this cause and

Court to vacate the conviction and sentence in this cause and remand this case for new trial.

**AN EVIDENTIARY HEARING IS REQUESTED.**

Respectfully submitted,



Gerald M. Handley #24294  
SPECK & HANDLEY  
1150 Grand - Suite 810  
Kansas City, Missouri 64106  
(816) 471-7145  
Counsel for Defendant Middleton

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was hand delivered to Pat Peters, Assistant Prosecuting Attorney, 415 E. 12th Street, Kansas City, Missouri 64106, this 25th day of November, 1991.



Gerald M. Handley

**CERTIFIED COPY**

I certify that the foregoing document is a full, true and complete copy of the original on file in my office and of which I am legal custodian.

Austin E. Van Buskirk  
Court Administrator  
Circuit Court of Jackson County, Missouri

7-7-92 By Barbara Hegarty  
Date Deputy