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**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS,
SUPREME COURT OF MISSOURI
(SEPTEMBER 3, 2024)**

IN THE SUPREME COURT OF MISSOURI

September Session, 2024

STATE EX REL. RICKY DURHAM,

Petitioner,

v.

RICHARD ADAMS,

Respondent.

No. SC100678

HABEAS CORPUS

St. Francois County Circuit Court

No. 23SF-CC00027

Eastern District Court of Appeals No. ED112802

Now at this day, on consideration of the petition for a writ of habeas corpus herein to the said respondent, it is ordered by the Court here that the said petition be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, BETSY LEDGERWOOD, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session thereof, 2024, and on the 3rd day of September, 2024, in the above-entitled cause.

WITNESS my hand and the Seal of
the Supreme Court of Missouri, at
my office in the City of Jefferson,
this 3rd day of September, 2024.

/s/ Betsy Ledgerwood
Clerk

/s/ Kelsey Hill
Deputy Clerk

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS, MISSOURI
COURT OF APPEALS EASTERN DISTRICT
(JULY 15, 2024)**

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

RICKY DURHAM,

Petitioner,

v.

RICHARD ADAMS,

Respondent.

No. ED112802

Writ of Habeas Corpus

Before: James M. DOWD, Presiding Judge
Writ Division V, Missouri Court of Appeals,
Eastern District

ORDER

Petitioner has filed a Petition for Writ of Habeas Corpus along with Suggestions in Support and Exhibits.

Being duly advised in the premises, the Court hereby DENIES Petitioner's Writ of Habeas Corpus.

SO ORDERED.

James M. Dowd
Presiding Judge
Writ Division V
Missouri Court of Appeals,
Eastern District

Dated: July 15, 2024

cc: Richard Adams
Andrew Crane
Michael Gross
Evan Buchheim

**ORDER AND JUDGMENT, CIRCUIT COURT
OF ST. FRANCOIS COUNTY, MISSOURI
(SIGNED MARCH 28, 2024;
FILED MARCH 29, 2024)**

IN THE CIRCUIT COURT OF
ST. FRANCOIS COUNTY, MISSOURI

RICKY DURHAM,

Petitioner,

v.

RICHARD ADAMS, WARDEN,

Respondent.

Case No. 23SF-CC00027

Before: Patrick L. KING, Judge.

ORDER AND JUDGMENT

The matter is before the Court on Petitioner Ricky Durham's petition for a writ of habeas corpus. The matter has been briefed, and the Court heard legal arguments on January 10, 2024. After consideration of the relevant filings and argument, the Court denies the petition for a writ of habeas corpus.

Petitioner is an inmate at the Eastern Reception, Diagnostic, and Correctional Center (ERDCC) in Bonne Terre, Missouri. In 1989, a jury found Petitioner guilty of murder in the first degree in the Circuit Court of St.

Louis City. Petitioner was sentenced to life in prison. In 1987, prior to the state conviction, Petitioner was charged and convicted in U.S. District Court for the Eastern District of Missouri under 18 U.S.C. § 1114, for murdering a United States postal worker while the postal worker was engaged in his official duties. Petitioner was sentenced to life in prison and was serving his sentence in the Federal Bureau of Prisons until his transfer to state custody to serve his state sentence. Respondent Richard Adams is the Warden of ERDCC and supervises Petitioner's custody, so Warden Adams is the proper respondent under Rules 91.01(c) and 91.07.

In his petition, Petitioner challenges his state conviction of murder in the first degree. Because his state and federal convictions arise from the same homicide, Petitioner argues that his state conviction runs afoul of the Supremacy Clause of the United States Constitution because the Missouri state murder statute is preempted by the federal statute that criminalizes the murder of federal workers engaged in their official duties.

In cases involving federal preemption "the purpose of Congress is the ultimate touchstone." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Federal preemption of state law can happen in three circumstances: (1) the federal statute expressly states it preempts state law; (2) the state law conflicts with the federal law; or (3) the federal law covers the entire legislative field such that Congress made clear that states cannot supplement the federal law. *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992). In this case, Petitioner

has alleged both that the “field preemption” and “conflict preemption” doctrines afford him relief.

As an initial matter, Petitioner’s petition challenges the state prosecution for the murder of a federal postal worker under state law on the basis of field preemption as well as conflict preemption. In ¶ 17 of his petition, Petitioner alleges:

The provision [in § 1114] for federal prosecution and punishment of persons who kill federal employees in the performance of their duties, and the clear indications in legislative history that this law was intended to assume control of and ensure adequate investigation, prosecution, and punishment of such crimes in order to protect the functioning of the federal government and the lives of its official personnel, indicates Congressional intent to preempt state interference in this area.

And he alleges in ¶ 18:

Again, the provision for federal prosecution and punishment of persons who kill federal employees in the performance of their duties, and the clear indications in legislative history that this law was intended to assume control of and insure investigation, prosecution, and punishment of such crimes to the satisfaction of the federal government in order to protect the functioning of that government and the lives of its official personnel, indicates Congressional intent to preempt state interference in this area—“however respectable and well disposed” the intent and capacity of *some* state law enforcement approaches might be.

In those paragraphs, Petitioner contends, *inter alia*, that Congress enacted § 1114 to regulate a field of law traditionally occupied by the states—that is, the law enforcement response to violent crime, but in the case of this very specific statute violent crime committed against individuals employed by and carrying out the operations of the federal government—in a way that clearly manifested its intent to control a narrow but distinct part of field: Congress took control of the law enforcement response to the murder of or assault upon a federal government employee while the employee was performing the government’s work. That is the definition of field preemption. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

The doctrine of “field preemption” was discussed at length in *Pennsylvania v. Nelson*, 350 U.S. 497 (1956). There, the Supreme Court explicitly ruled in that case that a state sedition law was preempted by Federal sedition laws. *Nelson*, 350 U.S. at 498. In coming to its conclusion, the Court stated “. . . [w]hen we were confronted with a like situation in the field of labor-management relations, Mr. Justice Jackson wrote: ‘A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law.’ (footnote omitted). Should the States be permitted to exercise a concurrent jurisdiction in this area, federal enforcement would encounter not only the difficulties mentioned by Mr. Justice Jackson, but the added conflict engendered by different criteria of substantive offenses.” *Nelson*, 350 U.S. at 509. The Court went on to cite as most relevant the record that “. . . Congress has occupied the field to the exclusion

of parallel state legislation, that the dominant interest of the Federal Government precludes state intervention, and that administration of state Acts would conflict with the operation of the federal plan . . . ” *Id.*

Applying those principles to the case at bar, the Court finds that Petitioner has offered no substantive reason to believe that by passing the statute in question, Congress meant to occupy the field of murder prosecution to the exclusion of local state law, in the event the murder victim happened to be a postal worker in the performance of their duties. The prosecution of Petitioner, for example, could not be credibly said to “interfere” with the Federal interest in bringing the killers of postal workers to justice, but rather to support, buttress and augment the state effort. In this situation the Federal interest is not dominant to the exclusion of state law, and there is no evidence that Congress has “taken the particular subject-matter in hand . . . ” to the exclusion of state jurisdiction. *See Nelson*, 350 U.S. at 504, citing *Charleston & Western Carolina R.Co. v. Varnville Furniture Co.*, 237 U.S.597, 604 (1915). This Court cannot see its way clear to grant Petitioner relief on the notion Federal jurisdiction in this field was exclusive or dominant, and therefore his claim on this point is denied.

Petitioner has also raised the claim that “conflict preemption” prevents the imposition of his state sentence. Pet at 4. Conflict preemption occurs when “when compliance with both state and federal law is impossible, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress.” *United States v. Locke*, 529 U.S. 89, 109 (2000) (quoting *California v.*

ARC America Corp., 490 U.S. 93, 100-101 (1989)) (internal quotation marks omitted). Here, Petitioner argues that the Missouri statute is standing “as an obstacle to the accomplishment and execution of the full purposes and objective of Congress.” Pet. at 4.

Petitioner’s argument that the legislative history of the federal murder statute precludes the application of Missouri’s statute is unavailing, because the United States Supreme Court has twice held that the purpose of the federal statute is to protect federal employees and to stop the hindrance of the execution of federal government duties, *not* to strip states of the ability to prosecute criminal acts when there is overlapping jurisdiction. *See United States v. Feola*, 420 U.S. 671, 683-84 (1975); *Ladner v. United States*, 358 U.S. 169, 174-76 (1958).

In *Feola*, the Supreme Court was tasked with determining whether knowledge that the intended victim was a federal officer was a requirement to obtain a conviction under 18 U.S.C. § 111.¹ 420 U.S. at 672–73. The Court ultimately held that the knowledge was not required in light of the purpose of the statute. *Id.* at 684.

The Court reasoned, looking at the legislative history to determine the purpose, that:

The [Attorney General’s] letter concerned not only the section prohibiting assaults but also the section prohibiting killings. The latter, [section] 1, was not needed to fill a gap in existing substantive state law. The States

¹ This section prohibits the assault of federal officers during the course of their official duties. 18 U.S.C. § 111.

proscribed murder, and, until recently, with the enactment of certain statutes in response to the successful attack on capital punishment, murder of a peace officer has not been deemed an aggravated form of murder, for all States usually have punished murderers with the most severe sanction the law allows. Clearly, then, Congress understood that it was not only filling one gap in state substantive law but in large part was *duplicating state proscriptions* in order to insure a federal forum for the trial of offenses involving federal officers. Fulfillment of the congressional goal to protect federal officers required then, as it does now, the highest possible degree of certainty that those who killed or assaulted federal officers were brought to justice. In the congressional mind, with the reliance upon the Attorney General's letter, certainty required that these cases be tried in the federal courts, for no matter how 'respectable and well disposed,' it would not be unreasonable to suppose that state officials would not always or necessarily share congressional feelings of urgency as to the necessity of prompt and vigorous prosecutions of those who violate the safety of the federal officer. From the days of prohibition to the days of the modern civil rights movement, the statutes federal agents have sworn to uphold and enforce have not always been popular in every corner of the Nation. Congress may well have concluded that [section] 111 was necessary in order to insure uniformly vigorous

protection of federal personnel, including those engaged in locally unpopular activity.

Id. at 683–84 (emphasis added).

The purpose and goal of the statute was to give “maximum protection to federal officers by making prosecution for assaults upon them cognizable in the federal courts.” *Id.* at 684; *see also United States v. Kirkland*, 12 F.3d 199, 202 (11th Cir. 1994) (*per curiam*) (citing H.R. Rep. No. 1350, 90th Cong., 2d Sess. 1-14 (1968)) (finding in a prior version² of 18 U.S.C. § 1114 that “[i]t [was] evident that Congress was concerned with the increasing number of assaults on postal employees while engaged in performing their duties and felt it appropriate to augment the level of federal protection to the class of all postal employees, rather than just to postal inspectors.”).

In *Ladner*, the United States Supreme Court decided whether two counts of a conviction for the same action under 18 U.S.C. § 254 was sustainable under the statutory language.³ *Ladner*, 358 U.S. at 170-71. *Ladner* was convicted of two counts of assaulting a federal officer while the officers were engaged in their official duties. *Id.* at 170. Specifically, *Ladner* fired one shot from a shotgun and the shotgun pellets hit and assaulted two officers. *Id.* at 171.

² The statute has since been updated to broadly encompass all federal officials instead of having a list. *Compare* 18 U.S.C. § 1114 (1994) (listing each individual official) *with* 18 U.S.C. § 1114 (2022) (current version).

³ This was the predicate to 18 U.S.C. § 111 which prohibits the assault of a federal officer while he or she engages in official duties. *Ladner*, 358 U.S. at 170 n. 1.

Ladner contended that he only committed one assault rather than two. *Id.*

The Court, construing the statutory language, attempted to ascertain the congressional purpose by looking at the legislative history. *Id.* at 173–74. The Court reasoned that “[t]he [legislative] history is scant, consisting largely of an Attorney General’s letter recommending the passage of the legislation, and sheds no real light on what Congress intended to be the unit of prosecution.” *Id.* at 174–75. But the Court said that it was plausible:

[T]hat the congressional aim was to prevent hindrance to the execution of official duty, and thus to assure the carrying out of federal purposes and interests, and was not to protect federal officers except as incident to that aim. Support for this meaning may be found in the fact that [section] 254 makes it unlawful not only to assault federal officers engaged on official duty but also forcibly to resist, oppose, impede, intimidate or interfere with such officers.

Id. at 175–76. Ultimately, the Court found that Ladner committed only one assault. *Id.* at 178.⁴

The United States Supreme Court has twice held the purpose of the statute was to protect federal officials and to stop the hindrance of the execution of

⁴ The Court’s conclusion was based on the Rule of Lenity because “the Court [would] not interpret a federal criminal statute so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended.” *Id.*

official duty. It has not held that the purpose was to give the federal government sole control over prosecuting the murders of federal officials. So, Petitioner's claim has no basis in federal precedent interpreting Congress's intent.

In addition to failing to accurately characterize Congress's intent, Petitioner's conflict preemption argument fails in light of the United States Supreme Court's recent decision in *Kansas v. Garcia*, 140 S. Ct. 791 (2020). In *Garcia*, three illegal aliens were convicted of committing identity theft under Kansas state law when they used "another person's Social Security number on state and federal tax-withholding forms that they submitted when they obtained employment." *Garcia*, 140 S. Ct. 791, 797 (2020). In the state court proceedings below, the Kansas Supreme Court held that the Immigration Reform and Control Act of 1986, a U.S. congressional statute, expressly preempted the Kansas criminal statute. *Id.*

The United States Supreme Court reversed the Kansas Supreme Court. *Id.* The United States Supreme Court found that there was neither express nor implied preemption. *Id.* In addressing the claim that there was conflict preemption between the Kansas law and federal law, the Court concluded that there were no grounds for conflict preemption. *Id.* at 806. The Court reasoned that:

The mere fact that state laws like the Kansas provisions at issue overlap to some degree with federal criminal provisions *does not even begin to make a case for conflict preemption*. From the beginning of our country, criminal law enforcement has been primarily a responsibility of the States, and that remains

true today. In recent times, the reach of federal criminal law has expanded, and there are now many instances in which a prosecution for a particular course of conduct could be brought by either federal or state prosecutors. *Our federal system would be turned upside down if we were to hold that federal criminal law preempts state law whenever they overlap, and there is no basis for inferring that federal criminal statutes preempt state laws whenever they overlap.* Indeed, in the vast majority of cases where federal and state laws overlap, allowing the States to prosecute is entirely consistent with federal interests . . . In the end, however, the possibility that federal enforcement priorities might be upset is not enough to provide a basis for preemption. The Supremacy Clause gives priority to “the Laws of the United States,” not the criminal law enforcement priorities or preferences of federal officers. Art. VI, cl. 2.

Id. at 806–07 (*emphasis added*).

There is no conflict preemption simply because there is overlap between the state and federal criminal offenses. Petitioner here is arguing exactly what the *Garcia* court rejected. This claim is likewise denied.

Wherefore, it is hereby ORDERED, ADJUDGED and DECREED that Petitioner Ricky Durham’s petition ought to be, and the same is hereby denied.

App.16a

IT IS SO ORDERED.

/s/ Patrick L. King
Judge

Dated: 3-28-24

**SENTENCE AND JUDGMENT
AS PERSISTENT OFFENDER
(NOVEMBER 3, 1989)**

State of Missouri }

FORM A

City of St. Louis }

**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(ST. LOUIS CITY)**

STATE OF MISSOURI,

Plaintiff,

v.

RICKY DURHAM,

Defendant.

Cause No. 871-1409 A

Division No. 21

Before:

SENTENCE AND JUDGMENT

The Court finds beyond a reasonable doubt that
the Defendant is a:

☒ Persistent offender

and the Defendant is subject to an extended term of imprisonment under Section 558.016 RSMo. and/or Section 558.019 RSMo. and/or Section 195.200 RSMo.

Now on this 3 day of November, 1989, comes Dwight A. Warren, Attorney for the State of Missouri, and Defendant in person and by Susan Boresi Public Defender/Other Attorney) Attorney for Defendant, in open Court.

COUNT I

Whereupon, said Defendant is informed by this Court that he has heretofore on the 5th day of October, 1989.

☒ been found guilty by the Jury

On Count I to the offense of Murder in the first degree and being now asked by the Court if he/she has any legal cause to show why Sentence and Judgment should not be pronounced against him/her according to the law, and still failing to show such cause, it is therefore the Sentence, Order and Judgment of this court that Defendant, Ricky Durham, having been found guilty as aforesaid, and in accordance with the punishment heretofore assessed by the Jury be and is hereby ordered committed to the Missouri Department of Corrections and Human Resources, for a period of life years; said sentence to be served consecutively to the sentence imposed in 87 CR 5 United States, (state Count or other Cause No.) for a total of life years.

District Court for the Eastern District, Missouri

FORM B

[. . .]

Defendant advised of his/her rights under Rule
29.15; no probable cause found.

Probation denied.

- ☒ It is further ordered by this Court that jail time prior to conviction allowed Defendant.
- ☒ It is further considered, ordered and adjudged by this Court that court costs be taxed against Defendant and that execution issue thereon.
- ☒ It is further ordered and adjudged by this Court that the State of Missouri have and recover of Defendant the sum of \$3600 for Crime Victim Compensation.

SO ORDERED:

/s/ Charles A. Shaw
Circuit Judge

[. . .]

**JUDGMENT IN A CRIMINAL CASE
(FEBRUARY 24, 1988)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA

v.

RICKY DURHAM
4513 Oakwood
Pine Lawn, MO

Case Number: 87-00190Cr(5)

Before: Stephen N. LIMBAUGH, U.S. District Judge.

Terry Flanagan
Attorney for Defendant

THE DEFENDANT ENTERED A PLEA OF:

☒ not guilty as to count(s) I & II.

THERE WAS A:

☒ verdict of guilty as to count(s) I & II.

THE DEFENDANT IS CONVICTED OF THE OFFENSE(S) OF: murder of a U.S. Postal Service Mail Carrier, in violation of Title 18, U.S.C., § 1111 and 1114 as charged in Count I of the Indictment. Defendant did use a firearm to commit a crime of violence, in violation of Title 18, U.S.C., § 924(c) as charged in Count II of the Indictment.

IT IS THE JUDGMENT OF THIS COURT THAT: Defendant is committed to the custody of the Attorney General or his authorized representative for a period of imprisonment of FIVE (5) YEARS as to and under the charge contained in Count II of the indictment. Defendant is given a term of LIFE IMPRISONMENT as to and under the charge contained in Count I of the indictment. Said term of imprisonment imposed under Count I to run consecutively to the term imposed in Count II. Defendant is FURTHER ORDERED to make restitution in the amount of Four Thousand, One Hundred and Fifty Four Dollars (\$4,154.00) to be paid to the U.S. Department of Justice for disbursement.

In addition to any conditions of probation imposed above, IT IS ORDERED that the conditions of probation set out on the reverse of this judgment are imposed.

CONDITIONS OF PROBATION

Where probation has been ordered the defendant shall:

- (1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
- (2) associate only with law-abiding persons and maintain reasonable hours;
- (3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);

- (4) not leave the judicial district without permission of the probation officer;
- (5) notify your probation officer immediately of any changes in your place of residence;
- (6) follow the probation officer's instructions and report as directed.

The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

IT IS FURTHER ORDERED that the defendant shall pay a total special assessment of \$ 100.00 pursuant to Title 18, U.S.C. Section 3013 for count(s) I & II as follows:

IT IS FURTHER ORDERED THAT counts _____ are DISMISSED on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall pay to the United States attorney for this district any amount imposed as a fine, restitution or special assessment. The defendant shall pay to the clerk of the court any amount imposed as a cost of prosecution. Until all fines, restitution, special assessments and costs are fully paid, the defendant shall immediately notify the United States attorney for this district of any change in name and address.

IT IS FURTHER ORDERED that the clerk of the court deliver a certified copy of this judgment to the United States marshal of this district.

February 24, 1988

Date of Imposition of Sentence

/s/ Stephen N. Limbaugh

Signature of Judicial Officer

Stephen N. Limbaugh, U.S. District Judge

Name and Title of Judicial Officer

February 24, 1988

Date

[. . .]

**CRIMINAL INFORMATION
(SEPTEMBER 12, 1989)**

IN THE CIRCUIT COURT OF THE CITY OF
ST. LOUIS STATE OF MISSOURI

STATE OF MISSOURI,

Plaintiff,

v.

RICKY DURHAM,

Defendant.

Cause No. 871-1490 A

CHARGES

Minimum Term Offender and
Murder in the First Degree

WITNESSES

All Previously Endorsed Witnesses

**SUBSTITUTE INFORMATION
IN LIEU OF INDICTMENT**

Dwight A. Warren, Assistant Circuit Attorney for the City of St. Louis, State of Missouri, charges a substitute information in lieu of indictment in that the defendant, in violation of Section 565.020.1, RSMo, committed the class A felony of murder in the first degree, punishable upon conviction under Section 565.020.2,

RSMo, in that on May 7, 1987, in the City of St. Louis, State of Missouri, the defendant after deliberation knowingly killed KENNETH CLARK by shooting him.

Defendant is a prior offender under Sections 558.016 and 557.036.4, RSMo, in that he has pleaded guilty of or has been found guilty of a felony. The defendant is also a persistent offender punishable by sentence to an extended term of imprisonment under Sections 558.016 and 557.036.4, and further is a persistent offender under Section 558.019, RSMo, in that he has pleaded guilty to or has been found guilty of two or more felonies committed at different times. The felonies are as follows:

On January 24, 1983, the defendant pled guilty to the felony of Robbery in the First Degree, in the Circuit Court, of the City of St. Louis, State of Missouri.

As a result, he served time of imprisonment for more than 120 days in the Missouri Department of Corrections and Human Resources, from the dates of March 2, 1983 to and including August 16, 1985.

On June 11, 1981, the defendant pled guilty to the felony of Attempt Burglary in the Second Degree, in the Circuit Court, of the City of St. Louis, State of Missouri.

George A. Peach
Circuit Attorney
of the City of St. Louis,
State of Missouri, by

/s/ Dwight A. Warren
Assistant Circuit Attorney

Dwight A. Warren, Assistant Circuit Attorney of the City of St. Louis, State of Missouri, being duly sworn, upon oath says that the facts stated in the above information are true, according to his best information, knowledge and belief.

Sworn and subscribed before me this 12 day of Sept, 1989.

/s/ Freeman R. Bosley, Jr.
Clerk of the Circuit Court of the
City of St. Louis, Missouri

/s/ D McGuire
Deputy Clerk

**GRAND JURY CHARGES
(AUGUST 13, 1987)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICKY DURHAM,

Defendant.

No. 87-00190CR(5)

COUNT I

The Grand Jury charges that:

On or about May 7, 1987, in the Eastern District of Missouri,

RICKY DURHAM, the defendant herein, with premeditation and malice aforethought did murder Kenneth Charles Clark, a United States Postal Service Mail Carrier while the Mail Carrier was engaged in the performance of his official duties.

In violation of Title 18, United States Code, Sections 1111 and 1114.

COUNT II

The Grand Jury further charges that:

On or about May 7, 1987, in the Eastern District of Missouri,

RICKY DURHAM, the defendant herein, did unlawfully and wilfully use a firearm, that is, a .38 caliber revolver, to commit a crime of violence, namely, the unlawful killing of an employee of the United States Postal Service, a felony prosecutable in a court of the United States.

In violation of Title 18, United States Code, Section 924(c).

A TRUE BILL

{signature not legible}

(acting) Foreperson

Thomas E. Dittmeier

United States Attorney

/s/ Timothy J. Wilson

Assistant United States Attorney