Appellate Process pursued by Larry Griffin and the State's responses:

First appeal – Direct Appeal to Missouri Supreme Court: issues raised by Larry Griffin and rulings by the Court

Larry Griffin filed an appeal directly with the Supreme Court of Missouri on August 11, 1981.[22] Griffin raised several issues on direct appeal. Some issues involved instructional, purely technical legal issues. Others, however, were challenges to the evidence itself. There was no challenge based on Wallace Conners absence from the trial. The primary challenge was to the admission of evidence by the State on the first attempt on Quintin Moss' life and the hearsay statements of Moss and Campbell about that shooting. The Supreme Court denied these challenges and upheld the conviction and sentence of Larry Griffin. The direct appeal did not raise and the Supreme Court did not reference the absence of testimony from Wallace Conners. The Supreme Court affirmed his conviction on December 20, 1983. The United State's Supreme Court denied certiorari on October 1, 1984.

Post-conviction challenge in Circuit Court by Larry Griffin claiming ineffective counsel:

On November 16, 1984, Larry Griffin filed a post-conviction relief motion (PCR) challenging his conviction and alleging his trial counsel, Frederick Steiger, was ineffective. In the end, Griffin filed an original PCR motion and three additional amended motions adding claims. The final PCR contained over 30 allegations challenging legal rulings by the Court, actions by the prosecutor and actions of defense counsel Steiger. Of particular interest to the Circuit Attorney's current investigation, was the absence of any request in any of Griffin's pleadings seeking Wallace Conners as a witness for the defense. The majority of the challenges were on technical, legal issues that challenged settled procedure and were dismissed in accordance with long-established law. Some substantive issues resulted in evidence being heard

[22] See Appendix for Griffin Case Chronology

by the court. Indeed, an evidentiary hearing was conducted on October 31, 1986. At that hearing, several individuals testified including the trial prosecutor Gordon Ankney, Robert Campbell, Frederick Steiger, Griffin family members and Larry Griffin himself.

One fundamental allegation was that the defense attorney was ineffective for failing to call Robert Campbell as a witness. Essentially, Larry Griffin claimed his attorney was ineffective because he did not call Campbell to testify in front of the jury about his knowledge on the first attempt on Quintin Moss' life in May 1980. Griffin testified on this issue directly. He alleged that Campbell, when presented with Larry Griffin and Reggie Griffin in the hospital for identification, said they were not the ones shooting at him and Moss. However, at the PCR hearing Campbell testified only that he could not identify the individuals shooting at him and Moss on May 13, 1980. The court did not find Larry Griffin credible on this issue.

Another allegation addressed at the evidentiary hearing on the PCR motion, was that the trial prosecutor committed misconduct and sent Robert Campbell home; thus, preventing him from testifying. The trial court again heard evidence on this matter and found it not to be credible. Indeed, Defense Attorney Steiger explained, he had worked to keep any reference to Campbell and the first shooting attempt on Quintin Moss, out of the trial and that to call Campbell would have prevented or substantially undermined his strategy to keep the jury from learning about the May attempt on Quintin Moss' life altogether. The trial court found this to be an effective trial strategy by the defense. The trial court also found that the evidence at the PCR motions hearing did not support this allegation – neither Robert Campbell nor Gordon Ankney testified that Ankney sent him home.

A third allegation raised was that Defense Counsel Steiger was ineffective for failing to check with the Trading Times about the alibi witness' use of the paper. The trial court heard

testimony on the matter and could not find anything in the record that indicated that Steiger knew in advance of Mr. Greenlee's testimony about his assertion on the timing of his call to "Trading Times." The court ruled, in line with established law, that there was no ineffective assistance of counsel for failing to double check an alibi witness' statement with a third party.

Larry Griffin testified at the PCR motion hearing. He explained he was aware of his defense attorney's decision to focus on winning the second capital murder case pending against him for his actions in the death of Sylvester Crawford. He explained that Steiger believed the Crawford murder case was the stronger of the two murder cases. Griffin understood that Steiger wanted to beat the murder charge that involved Quintin Moss as the weaker of the State's cases. He also suggested that despite his lengthy number of convictions and pending cases, his lawyer prevented him from testifying in his own behalf. Nowhere in his testimony at his PCR motion does he indicate that he wanted Wallace Conners produced. Nowhere in this testimony does he indicate he believed Wallace Conners had information favorable to his defense. After discussions and evidentiary hearings on the PCR motion, the trial court denied Griffin's motion for post-conviction relief on February 23, 1987.

Larry Griffin's Appeal to Eastern District of Missouri Court of Appeals claiming ineffective assistance of counsel:

The Missouri Court of Appeals, Eastern District of Missouri denied Griffin's appeal of the trials courts denial of his PCR motion. It affirmed the trial court's ruling on February 16, 1988. Two appellate points addressed technical legal issues. The Court of Appeals in reviewing Larry Griffin's accusations against his defense counsel reviewed a factual claim to see if Griffin's counsel Frederick Steiger was ineffective. The Court found that he was not ineffective for failing to call the unintended victim in the May shooting attempt, Robert Campbell, at trial.

The Court ruled that there was evidence that Campbell had expressed fear of Larry Griffin and refused to identify him. The Court found, based on Ankney's testimony, that there was evidence that Campbell was subpoenaed to testify at trial but told investigators that he feared Griffin and would leave the courtroom if needed to avoid testifying. Larry Griffin's testimony at the PCR that Campbell's testimony would have aided him was examined and found inaccurate.

The Court examined the defense attorney's efforts to "limit what [he] saw as the State's efforts to make a nexus of this whole common scheme. And what [he and Larry Griffin] were trying to do, and what [they] did pre-trial on the motions was to try and keep as much of this out, on the basis that it had absolutely nothing to do with Larry."[23] The Court of Appeals ruled "[a]fter considering the circumstances and affording counsel due deference we conclude that the decision not to interview and call Robert Campbell to testify at trial was supported by reasonable professional judgment and was a matter of trial strategy." Nowhere in the written appeal did Larry Griffin or his counsel request and nowhere in the Court of Appeals opinion was there a similar analysis of Wallace Conners as a witness.

Larry Griffin's Federal Habeas Corpus proceedings:

Larry Griffin filed his first petition for writ of habeas corpus in the United States District Court on June 3, 1988. He filed various amended petitions, subsequent petitions and Federal Habeas appeals from 1988 to 1995. In the end, the United States Supreme Court denied his petitions for writ of habeas corpus on August 23, 1994. The United States Supreme Court denied certiorari for the final time on May 15, 1995. The majority of the challenges were technical legal issues not directly related to factual allegations. The petitions, in the majority, sought to overturn

[23] Legal opinion at 748 S.W. 2d 756 at759.

the actions of the trial court, the Missouri Supreme Court and the Court of Appeals for the Eastern District of Missouri on technical issues. However, of importance to the Circuit Attorney's Office were the factual issues raised in Griffin's multiple petitions, the actions of the State of Missouri in investigating and responding to those issues, the hearings held by the Federal District Court for the Eastern District of Missouri and the decisions by the appellate courts.

The first of Larry Griffin's Federal habeas petitions included several challenges to various legal rulings by the trial court. The petition again challenged the admission of the hearsay statements by Quintin Moss and Robert Campbell as to the May shooting attempt on Quintin Moss' life. The challenge essentially sought to overturn Missouri appellate court decisions on the admission of these statements as hearsay through the testimony of Missouria Moss, Detective Frederickson and Police Officer Murphy. In the end, the United States District Court, and eventually the United States 8th Circuit Court of Appeals, declined to overturn the conviction on this basis. The petition did not raise any claim or request for Wallace Conners to appear as a defense witness.

The petition did challenge the actions of the trial court prosecutor, claiming prosecutorial misconduct for using testimony of police officers the prosecutor knew to be perjured. The petition alleged that the prosecutor knew that Police Officer Murphy and Detective Frederickson lied about Robert Campbell's description of the car housing the shooter that shot at him and Moss on May 13, 1980 and lied about his ability to identify his shooter. However, the United States District Court and the United States Court of Appeals denied this claim explaining there was no evidence to support it.

From 1991 to 1993, Larry Griffin filed his second, third and fourth amended petitions for writ of habeas corpus in the United States District Court. Many of the allegations re-raised legal issues previously litigated. However, Griffin included fresh claims that raised the legal challenge called "actual innocence." While Griffin always said he was not guilty of the crimes, in his federal habeas petitions he first included the challenges legally entitled "actual innocence." These claims were based on alleged new evidence of his innocence. The United States District Court conducted an evidentiary hearing on October 3, 1993 to hear testimony on these claims. At the hearing, the Court heard from Frederick Steiger, Kerry Caldwell, Robert Fitzgerald, Jimmy Massey and Terrence McDonough.

1993 Evidence related to and testimony by Fitzgerald on the role of Larry Griffin in Quintin Moss' murder

One of the matters addressed during the 1993 hearing, was a renewed allegation that the identification procedures used by the police during Robert Fitzgerald's selection of Larry Griffin as the shooter were improper.[24] Federal Court Judge Filippine heard from Frederick Steiger on the circumstances surrounding Robert Fitzgerald's identification of Larry Griffin from an array of mug shots. Mr. Steiger explained his trial tactics to suppress the identification and his own recollection of the testimony that resulted in the failure of those tactics. Judge Filippine also heard from a private investigator, Terrence McDonough, hired by Larry Griffin's federal habeas counsel through the Capital Punishment Resource Center. The private investigator had interviewed Robert Fitzgerald in jail in Florida in 1993. The interviews were not witnessed by others.

[24] The original defense attorney at trial filed a motion to suppress the identification of Larry Griffin because he alleged that that methodology of the police detectives was improper. The original trial judge heard evidence from Robert Fitzgerald and Detective Indelicato in 1981 on this issue. The trial court judge denied this motion.

McDonough spoke with Fitzgerald on a couple of occasions. McDonough stated Fitzgerald told him different things on different occasions. McDonough claimed that Fitzgerald was bothered by his in-court identification of Larry Griffin as the shooter of Quintin Moss. McDonough also claimed that Fitzgerald said that he had been shown a group of photographs and then a police detective singled out a particular picture (of Larry Griffin). McDonough said that Fitzgerald explained the police officer told Fitzgerald that the officer believed this was the person responsible for the shooting. McDonough also testified that Fitzgerald said that at the time of the mug shot identification of Larry Griffin that Fitzgerald was not positive it was of the same person he saw shoot Quintin Moss. At a different point in his testimony, McDonough explained that Fitzgerald had given him a different statement and that the police did not show Fitzgerald multiple pictures but only placed one picture in front of Fitzgerald. He again claimed Fitzgerald was unsure about the initial out-of-court identification. McDonough also stated Fitzgerald was unsure about his in-court identification of Larry Griffin.

McDonough questioned Fitzgerald about charges pending against Fitzgerald near the time of the trial against Griffin. McDonough asserted that Fitzgerald was very concerned about the severity of the penalties he could face on unrelated credit card charges and a home invasion assault and robbery. McDonough acknowledged on cross that he learned Mr. Fitzgerald was opposed to death penalty. McDonough had told Fitzgerald that he was the only eyewitness to the murder of Quintin Moss. McDonough acknowledged that he had prepared an affidavit for Fitzgerald based on conversations but that Fitzgerald refused to sign the affidavit. There is no evidence McDonough recorded any of his conversations with Fitzgerald – he instead filed his own affidavit summarizing Fitzgerald's testimony.

Prior to the federal court hearing, the Missouri Attorney General's Office learned of the purported changes in Fitzgerald's statement. The Attorney General's Office acted to investigate these allegations. The Attorney General sent an investigator, Van Godsey, to Pinellas County, Florida to interview Fitzgerald to see whether Fitzgerald had changed his statement. Investigator Godsey recorded his interview with Fitzgerald.[25] Pinellas County personnel witnessed the interview.

Investigator Godsey learned that Fitzgerald had concerns with the death penalty as a punishment and did not want the punishment on his conscience. Fitzgerald stated that he learned the matter was a death penalty case from Mr. McDonough. He told Investigator Godsey he felt that McDonough placed the life and death of Larry Griffin on his shoulders. Fitzgerald was very upset this case was a death penalty case and had mixed emotions because he had not been told it was a death penalty case initially. He said while he and McDonough discussed several concerns, he never recanted his identification of Larry Griffin.

Van Godsey provided Robert Fitzgerald with the affidavit signed by the private investigator McDonough. The affidavit was one the Attorney General's Office received from the Capital Punishment Resource Center (Griffin's defense) signed by McDonough and was nearly identical to one Fitzgerald had refused to sign. Fitzgerald explained he told McDonough that he could not sign the affidavit purporting to summarize his statement because several parts were false. Fitzgerald would not sign the false affidavit despite his personal feelings on the death penalty. The copy McDonough signed and supplied did not include Fitzgerald's statement on the affidavit's quality or accuracy.

During this interview with Van Godsey in August of 1993, Fitzgerald recalled that the police had shown him a set of photographs. However, he said that after the detective showed

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[25] See Appendix with Interview Transcript of Fitzgerald done by Van Godsey.

him the first photograph he paused and told Fitzgerald "we know he is involved." Fitzgerald stated the photograph was of Larry Griffin. Fitzgerald also said the photograph was of the person he saw shooting out of the car. He denied that any officers ever suggested or directed him to pick a particular photograph. He explained his statement to McDonough by stating that he had a feeling that the officers knew who was involved when they showed him the mug shots. He explained that he was unable to identify any other suspects from the other photographs. He also said he was concerned about Larry Griffin's appearance in court at trial. He said that Larry Griffin looked different in court – as if he had been cleaned up. He said that when he was in court he identified Larry Griffin because he knew it was him, but he now had concerns because of the changes to his appearance.

Fitzgerald explained to Van Godsey that McDonough's visit caused him emotional problems. He indicated that because of his personal feelings on the death penalty he thought about helping Larry Griffin. He concluded by saying, however, that he "had to tell the truth." Godsey asked him about what he meant by this statement and Fitzgerald explained that the person he saw firing the weapon out of the car was the person he identified. That person was Larry Griffin.

Fitzgerald also testified in person before Federal Court Judge Filippine on October 6, 1993 concerning his identification of Larry Griffin as the man he saw shooting Quintin Moss. At the hearing, Fitzgerald said that in 1980 when he identified Larry Griffin as one of men he saw shooting Quintin Moss, he was not concerned about the police procedures. He said one of police officers showed him one photograph and said, "this is the man we know did this." Fitzgerald explained that when he picked out the picture of Larry Griffin he picked that photograph because he identified the shooter regardless of the officer's action. He said "if it wasn't the person, I

would have stated 'No, that's not him," regardless of his statement." He explained that since the visit from Capital Resources Defense Fund investigator McDonough he reflected on the circumstances surrounding the photo identification. He now was unsure of its effect. He explained that in trying to recall his memories of 13 years before he was now uncertain because he could not keep what he had read since separate from his personal observations in 1980. He explained however "[t]he confusion is more in 1993 than in 1981 or 1980."

Fitzgerald continued his Federal hearing testimony by expressing concerns over his in-court identification of Larry Griffin. He said he identified Larry Griffin as the shooter in court because he assumed that it was the same man he identified in the photograph. He explained the person in the courtroom did not look like the same man; but that he identified him anyway because he knew the man was Larry Griffin and the man in the picture he identified was Larry Griffin.

Griffin's federal attorney questioned Fitzgerald extensively about whether he received any deal in exchange for his testimony. He repeatedly denied receiving any deals or benefits from the police or prosecutor in exchange for his testimony. He explained his participation as a witness slowed down his release from custody. He explained he believed that he would have been "released much earlier if this murder case [Moss' death] was not an issue in my life. So it didn't help me at all." He also was questioned about pending burglary, assault and robbery charges that had been dropped and stated again, there was no deal.

When the Assistant Attorney General questioned Fitzgerald under oath, Fitzgerald reiterated that the person he picked out of the photospread was the right person. He also expressed concerns about his in-court identification of Griffin. He explained that the person in court did not look like the same person in the picture or at the scene. When asked about those

concerns he explained his talk with Mr. McDonough had made him realize it was a capital offense case. He explained that only when McDonough asked him about any reservations was it when Fitzgerald first brought up the identification in court. Prior to his conversation about the death penalty with McDonough, Fitzgerald acknowledged he had not been troubled about his identification, but, after the conversation, he was. The police conduct when showing him the photographs, did not make any difference to him in selecting Griffin as the shooter.

Fitzgerald also essentially repeated his trial testimony as to the circumstances surrounding his presence with Carl at Sarah and Olive on June 26, 1980. However, for the first time, he acknowledged having been in the area in the past to purchase drugs. In all previous statements to the police, at deposition and at trial he had denied drug use.

Kerry Caldwell's testimony before US District Court Judge Filippine:

Judge Filippine also heard from a witness named Kerry Caldwell on October 6, 1993. Caldwell was a minor participant in the Bey crime organization in the mid to late 1980's. Caldwell claimed to have witnessed the murder of Quintin Moss by Humphrey Scott, Darryl Smith and Ronnie Parker. Caldwell specifically stated that Larry Griffin was not involved in the killing of Quintin Moss. He claimed to have been part of the same drug set at one time as Quintin Moss. He explained that when the head of the set, Dennis Haymon, went to prison, Dennis Griffin took over. Caldwell said that Larry Griffin was not a part of this drug set.

Caldwell said that everyone on the street knew that Quintin Moss had killed Dennis Griffin and that people were looking to kill him because of that belief. He claimed that he saw Quintin on June 26, 1980 and left a voice message for Darryl Smith on his verbal pager. He said he saw the group shortly thereafter pass by Caldwell and then go shoot Quintin Moss. He

watched for a while and left. He acknowledged that he had received immunity for all past convicted conduct from both the federal and state governments. He had received immunity also for his role in killing a witness to a case against Reggie Griffin because he was friends with the Griffin family. He also acknowledged receiving cash from the Griffin family to help him get on his feet. The Assistant Attorney General questioned Caldwell and learned two of the three individuals that Caldwell accused of Moss' murder, were dead. Judge Filippine questioned Caldwell himself on several inconsistencies between his hearing testimony and the affidavit filed by Griffin's counsel as an exhibit in support of Griffin's Third Amended Petition for Writ of Habeas Corpus.

The Attorney General's Office also investigated Caldwell's assertions about the actions of Ronnie Parker. They located Parker in prison. They interviewed him. He explained that he liked Larry Griffin and wanted to help him. However, he denied participation in the murder itself.[26]

Judge Filippine's rulings on Griffin's Writs:

On April 25, 1994, Judge Filippine rendered his ruling. The Judge specifically considered Fitzgerald's new testimony and compared it to his original statements at Larry Griffin's trial. Judge Filippine concluded that Fitzgerald's new testimony did not warrant a finding that his earlier identification of Griffin violated any of Griffin's rights. The Court explained that Fitzgerald's opinions on the death penalty, his difficulty in recollecting events from 12-13 years before the federal court testimony and his demeanor in the Judge's presence, lead the Judge to conclude that Fitzgerald's recent testimony was not credible to the extent that it

[26] Ronnie Parker corroborated this information about the activities of the Attorney General's Office.

differed from his trial testimony. Furthermore at no point in his federal court testimony did Fitzgerald recant his pretrial identification of Larry Griffin.

Judge Filippine found that Caldwell's recent testimony was not credible. In particular, the Court explained that he did not find Caldwell's testimony credible in light of the vast discrepancies between the hearing testimony and his affidavit itself. The Court also considered Caldwell's lifelong relationship with the Griffin family and his receipt of money from the Griffin family. The District Court found against Griffin on all claims.

United States Court of Appeals Affirmation of Judge Filippine's Rulings:

On August 23, 1994, the United States Court of Appeals for the Eight Circuit rendered its opinion on Griffin's appeal of the District Court's findings. The Eighth Circuit Court of Appeals refused to reverse the District Court's actions. The Court of Appeals, in affirming Judge Filippine's actions noted that Fitzgerald never recanted his pretrial identification of Griffin. The Court also found that Fitzgerald never doubted his in-court identification of Larry Griffin until he met with McDonough. Consequently, the Court of Appeals refused to disturb the District Court's determination "that Fitzgerald's statements contained in the McDonough affidavit were the product of bias and were offered in an attempt to provide [Griffin] with relief while not refuting his earlier, more credible trial testimony." The Court of Appeals specifically reviewed the circumstances surrounding Fitzgerald's pretrial identification of Griffin and upheld the District Court's analysis that the pretrial identification of Griffin by Fitzgerald was reliable and not tainted by improper police conduct.

Larry Griffin's request for clemency and denial by the Governor:

Larry Griffin requested clemency from Governor Carnahan in 1995. His petition was reviewed in line with standard procedure. The petition yielded a report from the Department of Corrections to the Governor. The Governor's staff interviewed witnesses who alleged Larry Griffin was not responsible for the murder of Quinton Moss. This included interviewing Kerry Caldwell. After reviewing the petition, the report from the State agency and information acquired by his office Governor Carnahan denied clemency in June of 1995.