

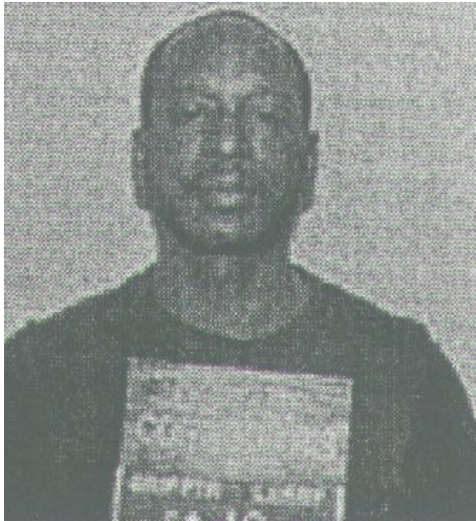


a campaign of Equal Justice USA

**MORATORIUM Now!**

Not one more execution!

---



**Larry Griffin (Missouri)**

### **Allegation**

On June 21, 1995, the State of Missouri, with the acquiescence of the federal government, executed Larry Griffin by lethal injection. The state and federal governments failed to ensure Griffin's right to a fair and impartial trial. The unfair trial resulted in Griffin's execution.

### **Crime**

Quintin Moss was killed in a drive-by shooting while allegedly dealing drugs on a street corner in St. Louis, Missouri on June 26, 1980. Griffin was arrested, tried, and convicted for the murder.

### **Salient Issues**

- Larry Griffin's lawyer was a recent law school graduate who had never tried a murder case. He failed to provide Griffin with competent legal representation. He failed to investigate adequately and thus did not find evidence of, or identify eyewitnesses who could testify to, Griffin's innocence.
- Three eyewitnesses were able to substantiate Griffin's claim of innocence.
- The state's primary witness later recanted his testimony and discredited his

identification of Larry Griffin, claiming the identification process was highly prejudicial.

- Evidence suggests that, prior to testifying, the state's primary witness was promised a reduced sentence in exchange for his testimony. The jury was not provided with this information.
- Investigations conducted after the trial revealed two new eyewitnesses who provided accounts of the incident that corroborated Griffin's innocence.
- One eyewitness testified under oath that Griffin was not involved in the killing.
- Another eyewitness, who knew both the victim and Larry Griffin, stated in a sworn affidavit that he saw the shooting, that he knew Larry Griffin, and that Griffin did not participate in the shooting.
- Forensic evidence from the car and weapons failed to link Griffin to the murder.
- The prosecution suppressed information about a witness who could testify that Griffin was not involved in an earlier attempt on the victim's life.
- The "actual innocence" standard imposed by the U.S. Supreme Court in reviewing state court decisions resulted in Griffin's actual innocence claims not being heard by the courts despite substantial evidence of innocence.

## **Trial**

Larry Griffin was convicted of murdering Quintin Moss based largely on the testimony of one eyewitness, Robert Fitzgerald, who had been at the scene of the killing. Shortly after the murder, Fitzgerald made a positive photo identification of Griffin. He then testified at trial that he saw three black males in the car from which the shots were fired and that he could identify Larry Griffin as one of them. He testified that Griffin shot at the victim through the window of the car with his right hand. Griffin's attorney did not challenge this, even though Griffin was, in fact, left-handed. He did present evidence that Griffin had seriously injured his left arm a few weeks earlier, but without evidence that Griffin was left-handed, the relevance of the testimony was lost to the jury. Larry Griffin's fingerprints were not found on either the car or the weapons. All other evidence against Griffin was circumstantial.

Griffin's lawyer failed to present a competent defense. In addition to missing important opportunities to challenge the state's case, he presented an alibi defense without investigation of the alibi. The prosecution conducted its own investigation and was able to discredit the alibi, showing that the alibi witness had erred about the day he and Griffin had been together, thus making it appear that the alibi had been fabricated.

Post-trial investigations by Griffin's lawyers revealed police and prosecutorial misconduct prior to and at the trial. The prosecutor had cut a deal for one witness' testimony. The prosecution failed to reveal that there were two additional eyewitnesses who confirmed that Griffin was not involved in the murder. The first testified that he witnessed the

shooting, and he did not recognize any of the three men who killed the victim. He knew Griffin and was certain that Griffin was not in the car with the shooters. The other witness, a 16-year-old member of a gang led by Griffin's brother at the time of the murder, also testified that Larry Griffin was not involved in the shooting and named the three men who were – all members of the gang led by Griffin's slain brother. He was able to describe the exact sequence of events leading to Moss's murder and to testify to the killers' motive. He also was able to identify correctly the place where the car and guns had been abandoned and later found by the police.

Fitzgerald, the eyewitness used by the prosecution to convict Griffin, also later provided information that helped support Griffin's claim of innocence. Fitzgerald admitted that he perjured himself at Griffin's trial when he positively identified Griffin in court. He also testified to the suggestive nature of the original police identification process. According to Fitzgerald, one of the investigating officers showed him a photograph of Griffin and told him, "We know this man is involved." Fitzgerald was then presented with five photos from which he identified Griffin.

## **Appeals**

Griffin's trial lawyer also served as his lawyer in the initial appeals despite his inexperience and apparent incompetence. The conviction and sentence were affirmed in state appeals courts without rehearing – decisions upheld by the U.S. District Court and, initially, by the Eighth Circuit Court of Appeals. Due to the incompetence of the original lawyer in failing to identify and raise several constitutional claims, the Eighth Circuit vacated its earlier decision and remanded the case back to the district court for further proceedings. The Eighth Circuit appointed a new lawyer, who amended Griffin's petitions to reflect the constitutional claims, including the claim that Griffin's first lawyer failed to provide competent counsel and thus, Griffin did not receive a fair trial. A limited evidentiary hearing was held by the Federal District Court, at which new evidence of Griffin's innocence was produced, including testimony from the two new witnesses, and Fitzgerald's testimony that he had perjured himself in his in-court identification of Griffin. Despite the constitutional claims and the new evidence of Griffin's innocence, the District Court again dismissed Griffin's petitions for relief. The Eighth Circuit affirmed the denial of all relief without permitting Griffin or his new lawyer to brief the court – a decision upheld by the U.S. Supreme Court.

## **Conclusion**

Larry Griffin was executed despite compelling evidence of his innocence and evidence that he did not receive a fair trial. Griffin's original lawyer lacked the necessary experience to undertake capital cases and failed to provide Griffin with competent counsel. He neither found nor presented evidence of his innocence or evidence challenging key prosecution

witnesses. He also made a highly prejudicial error when he failed to confirm independently the information provided by the defense's alibi witness at trial. Although the Eighth Circuit Court of Appeals agreed that Griffin's original lawyer failed to provide competent counsel, federal courts, including the U.S. Supreme Court, upheld Griffin's conviction and death sentence. In so doing, the courts relied on the new, and unreasonably high, standard of review for cases claiming innocence, which had evolved during Griffin's appeals. With issues of innocence still unresolved, Griffin was executed.

---

**Equal Justice USA - PO Box 5206 - Hyattsville, MD - 20782 - (301) 699-0042**

[www.quixote.org/ej](http://www.quixote.org/ej) - [ejusa@quixote.org](mailto:ejusa@quixote.org)