

No. 42012-1-II  
(Direct Appeal No. 38978-9-11)

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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**In re Personal Restraint of**  
**LESTER JUAN GRIFFIN,**  
**Petitioner.**

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**REPLY BRIEF IN SUPPORT OF AMENDED PERSONAL  
RESTRAINT PETITION**

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INNOCENCE PROJECT NORTHWEST CLINIC  
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## **I. INTRODUCTION**

On December 9, 2011, Mr. Griffin, through counsel, filed a Motion for Leave to file Amended Petition and Brief, a Motion to Stay and Abey the Proceedings, and an Amended Personal Restraint Petition. In these motions, Mr. Griffin requested that this Court waive the provisions of the Rules of Appellate Procedure (RAP) to stay the proceedings and allow time for DNA testing and for briefing. This Court stayed the proceedings until Mr. Griffin moved to lift the stay and set a briefing schedule. Mr. Griffin's Amended Personal Restraint Petition was timely filed, and his opening brief in support of the amended PRP is properly before this court pursuant to RAP 1.2, RAP 16.10, RAP 18.8 and the Court's rulings in this proceeding. In the interests of justice and because dismissal is inappropriate, this Court should reach the merits of Mr. Griffin's personal restraint petition.

## **II. BACKGROUND FACTS**

On December 9, 2011, through counsel, Mr. Griffin filed the following pleadings:

- Notice of Appearance
- Motion for Leave to File Amended Petition and Brief (attached hereto as Exhibit A)

- Amended Personal Restraint Petition (attached hereto as Exhibit B)
- Motion to Stay and Abey Personal Restraint Petition (attached hereto as Exhibit C)

In the Motion for Leave to File Amended Petition and Brief, attorney Jacqueline McMurtrie explained that Mr. Griffin contacted the Innocence Project Northwest (IPNW) for assistance, two law students were assigned to investigate, and that the investigation brought to light exculpatory evidence and evidence of a *Brady* violation. *See* Exhibit A at 3. It was also discovered that DNA tests were never performed on the shell casings. *Id.* The IPNW discussed with Mr. Griffin the filing of an amended personal restraint petition and brief. *Id.* at 4. IPNW discussed this with the State as well. *Id.* at 5. Mr. Griffin requested, through counsel, that the matter be stayed and abeyed to allow time for DNA testing, and for the results of that testing and counsel’s investigation to be incorporated into an amended brief in support of the amended petition.<sup>1</sup> *Id.* at 6.

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<sup>1</sup> When Mr. Griffin filed his *pro se* petition, he set forth, as allowed by RAP 16(a)(2)(iii), the facts, legal argument and authorities in the petition, rather than in an opening brief. In this motion, although it was inartfully phrased, the term “amended brief” referred to the fact that Mr. Griffin had briefed the issues raised in his *pro se* petition.

Through counsel, Mr. Griffin explained that a stay and abeyance was being sought because DNA results would have a substantial impact upon his personal restraint petition. *See Exhibit B at 2, 6.* Mr. Griffin requested that the Court waive or alter the provisions in the Rules of Appellate Procedure to allow the DNA proceedings to go forward before the resolution of the personal restraint proceedings, so that all the facts necessary to resolve the petition were before the Court. *Id.* at 5. Since the DNA testing had not yet been done and an opening brief would not be filed, Mr. Griffin requested that the Court allow additional briefing pursuant to RAP 16.10. *See Id.* at 4-5. Further, Mr. Griffin requested that if the Court did not grant his motion for a stay, he be given sufficient time to provide the Court with additional briefing and appendices to fully develop the legal and factual basis for his claims. *See Exhibit C at 6.* The State did not raise any objections or make any motions.

On December 16, 2011, Mr. Griffin's motions to file an amended personal restraint petition and to stay the matter pending further DNA testing were granted. The ruling directed Mr. Griffin to notify the Court when the DNA testing issues were resolved and to move to file any further supplemental pleadings at that time. *See 12/16/2011 ruling (attached as Exhibit D).*

On June 7, 2012, Mr. Griffin moved to lift the stay. In that motion, it was explained that due to the handling of the shell casings, DNA testing would not be possible. *See* Exhibit E at 2. Counsel did not learn of this until March 2012 and re-reviewed the case at that time for other possible testing sources. *See Id.* at Appendix A. During the time that the proceedings were stayed, IPNW was working on a motion for post-conviction DNA testing and planning on proceeding accordingly. *See* Exhibit F (Supplemental Declaration of Jacqueline McMurtrie).

In the June 7, 2012 motion, Mr. Griffin specifically requested that the Court set a briefing schedule for Petitioner's Opening Brief and for the State's response. On June 12, 2012, a ruling was issued allowing briefing to move forward and cautioning Petitioner that the issues in the supplemental brief may be subject to the one-year time bar if they were not raised in a previous, timely petition. *See* 6/12/12 ruling (attached as Exhibit G). The State did not object to the request for or the setting of a briefing schedule.

### **III. ARGUMENT**

The State's argument is as follows: Mr. Griffin's amended personal restraint petition did not comply with RAP 16.7 and his opening brief – setting forth the facts and evidence supporting his claims – should have been filed with the petition, pursuant to RAP 16.10(a); or Mr. Griffin

filed a supplemental petition which should be dismissed as a mixed petition. The State's argument ignores, however, the specific motions and rulings that were made in Mr. Griffin's case.

A. The Court Granted Mr. Griffin's Motion to Stay the Proceedings and the Brief in Support of the Amended Petition is Timely Filed.

When Mr. Griffin filed multiple pleadings in early December 2011 – a motion for leave to file an amended petition and brief, an amended petition, and a motion to stay the proceedings – he explained clearly, through counsel, the rationale behind the requests and the fact that an opening brief would not be filed with the petition. He requested that additional briefing be allowed later and that if the motion to stay the proceedings was not granted, he be given time to provide the Court with additional briefing and appendices to fully develop the legal and factual basis for the claims in the personal restraint petition. The motion to stay the proceedings was granted, which halted the personal restraint proceedings. Accordingly, the State's previously set deadline for filing a response was stricken and no new due date was set. *See* Exhibit D.

Mr. Griffin's opening brief filed in August 2012 was just that – a brief in support of his timely filed petition. The State's argument that the brief is untimely is wrong. The Court granted the stay to allow Mr. Griffin to brief at a later time all of the factual and legal arguments to support the

claims in the amended petition. Accepting the petition as filed, staying the proceedings and allowing for later briefing are all well within this Court's lawful authority. RAP 1.2(c) and RAP 18.8(a) allow this Court, on its own initiative or on motion of a party, to waive or alter the provisions of any of the rules of appellate procedure and enlarge or shorten the time within which an act must be done in a particular case to serve the ends of justice, subject to restrictions not applicable here.

The Court does not have the authority to amend or waive statutory requirements. *In re Pers. Restraint of Benn*, 134 Wn.2d 868, 939, 952 P.2d 116 (1998). Here, in granting Mr. Griffin's motions, the Court did not amend or waive statutory requirements, but only expanded or waived the Rules of Appellate Procedure. The State does not provide any authority for the argument that the brief is untimely, other than pointing at the RAPs. Yet, the Court's authority to alter or waive those rules is clear.

In proceeding as he did, Mr. Griffin's intent was reasonable. Mr. Griffin filed an amended personal restraint petition to narrow the grounds for relief to grounds counsel determined had merit. Mr. Griffin's request to stay the proceedings and brief the issues at a later time was a matter of expediency, since, without the DNA test results, Mr. Griffin did not know how the facts would develop. The results of the DNA testing would affect Mr. Griffin's claims – making them either more or less persuasive.

Staying the proceedings to obtain these results was an attempt to make efficient use of judicial and state resources. Developing the factual and legal arguments in subsequent pleadings, after DNA test results, would ensure that this Court and the State could consider the merits of all of Mr. Griffin's claims in a fully informed proceeding. This is a more efficient use of everyone's resources than piecemeal litigation by way of presenting the Court with multiple, successive petitions.

In light of the pleadings and the specific facts of this case, the State's assertion that Mr. Griffin's amended petition was filed to thwart the one-year time bar is unwarranted. *See* Response at 6. Counsel for Mr. Griffin had identified the opportunity for DNA testing on shell casings collected at the crime scene, the results of which would be highly probative as to the identity of the perpetrator(s) of the robbery at issue. *See* Exhibit G. The Washington State Patrol Crime Lab is capable of conducting this type of testing. *See Id.* The reason for the failure to do DNA testing has been set forth already. *See* Exhibit E at Appendix A. The work that was done during the stay in the proceedings is further explained in Exhibit G.

B. There Has Been No Prejudice to the State

The State's argument that the opening brief is untimely and the amended petition is deficient boils down to non-compliance with the

RAPs. RAP 16.10(a)(1) states that the opening brief “should” be filed with the petition. RAP 16.7 – Form of Petition – states that “the petition should set forth” a statement of the facts upon which the claim is based and the evidence available to support the factual allegations.<sup>2</sup>

The purpose behind these rules is clear. More than conclusory assertions are necessary to provide the reviewing court with enough information on which to decide the issues presented and to provide the State with enough information to craft a response. *See In Re Pers. Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). Here, the Court has not had to determine the validity of the PRP and the State did not have to respond to any of the claims, until after Mr. Griffin’s brief was filed. There has been no prejudice to the State from the filing of the amended PRP or from the filing of a brief in support thereof at a later time. The State never responded to Mr. Griffin’s *pro se* petition, and due to the stay, a response from the State was not triggered again until after the State knew what it had to respond to.

The argument that the amended PRP is deficient is an argument the State could have advanced at the time the petition was filed in a motion to dismiss the amended PRP. However, the State did not object to the

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<sup>2</sup> The State characterizes RAP 16.7 as setting forth a mandatory form of the petition. *See* Response at 2 (stating that the petition “must” set forth the grounds and “must” set forth the facts and evidence). That is not the language in the rule.

motion to file an amended PRP and brief, did not file a motion to dismiss the allegedly deficient amended PRP, and did not object to the motion to stay and abey the proceedings. The State also did not object to the motion to lift the stay and set a briefing schedule. The State cannot claim any prejudice from the way the proceedings have unfolded nor from having to respond to Mr. Griffin's claims at a later time.

The RAPs are necessary to administer justice fairly and efficiently.

RAP 1.2(a) states:

[The Rules of Appellate Procedure] will be interpreted liberally to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules, except in compelling circumstances where justice demands . . .

RAP 1.2 means courts can depart from the rules if there is “no discernible or practical prejudice flowing to respondent, no unfairness to the trial judge, and no inconvenience to [the] court.” *Millikan v. Bd. of Dir. of Everett Sch. Dist. No. 2*, 92 Wn.2d 213, 216, 595 P.2d 533 (1979) (quoting *King County Republican Cent. Comm. v. Republican State Comm.*, 79 Wn.2d 202, 208, 484 P.2d 387 (1971) (allowing appellants to file certification of facts after required deadline)). Here, this Court's rulings allowed for a placeholder petition and for later briefing – acts properly within this Court's province – and there is no prejudice to the State.

Dismissal of the petition under these circumstances is unwarranted and would be a violation of RAP 1.2. *Id.*

C. The Brief Does Not Raise New Claims

The State asserts that Mr. Griffin's brief appears to raise a claim not raised in his amended PRP – a *Brady* violation. Response at 2. This is incorrect. The third ground for relief in Mr. Griffin's amended PRP sets forth a violation of his right to a fair trial and to due process for the failure to disclose evidence of an exculpatory nature and/or necessary to establish bias or impeach the State's witnesses. *See* Exhibit B. This violation was also explained in the Motion for Leave to File an Amended Petition and Brief. *See* Exhibit A at 3-4. The other grounds for relief in the opening brief also match up with the amended personal restraint petition.

Mr. Griffin heeded this Court's reminder in the June 12, 2012 ruling that any issues raised in the supplemental pleadings may be subject to the one-year time bar if the issues were not raised in a timely filed petition. *See* Exhibit F. Here, the amended PRP was timely filed, and the brief does not raise any new issues. Whether Mr. Griffin's brief is called an opening brief or a supplemental petition, the conclusion is the same, on the relevant question whether Mr. Griffin's brief raises new issues not raised in the timely filed petition. It does not. Thus, consistent with the

Court's 6/12/12 ruling, the brief is properly before this Court *even if* it were to be considered a supplemental petition.

#### IV. CONCLUSION

Mr. Griffin relied on this Court's rulings staying the proceedings and allowing for additional briefing. Mr. Griffin has met his burden of providing the facts and evidence supporting his claims of unlawful restraint and has set forth why relief is warranted under relevant legal authority. The State has not answered the allegations nor identified any material disputed questions of fact. For all of these reasons and in the interests of justice, Mr. Griffin respectfully requests that this Court reach the merits and grant Mr. Griffin's Personal Restraint Petition, or in the alternative, remand the case for a reference hearing.

Dated this 6th day of February, 2013

Respectfully Submitted,

INNOCENCE PROJECT NORTHWEST CLINIC



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M. Fernanda Torres, WSBA # 34587  
Attorney for Lester J. Griffin

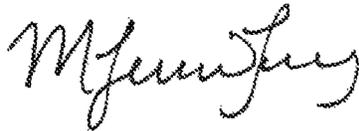
**CERTIFICATE OF SERVICE**

I certify that on the date listed below, I served by United States Mail, first-class postage, one copy of this Reply Brief in Support of Amended Personal Restraint Petition on the following:

Ms. Ann Crusser, Deputy Prosecuting Attorney  
Office of the Clark County Prosecuting Attorney, Appellate Division  
1013 Franklin Center  
P.O. Box 5000  
Vancouver, WA 98666-5000

Mr. Lester Juan Griffin, #838731  
H5-B108  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

Dated February 6, 2013 in Seattle, WA

A handwritten signature in black ink, appearing to read "M. Fernanda Torres". The signature is written in a cursive, flowing style.

M. Fernanda Torres, WSBA #34587

# Exhibit A



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**II. RELIEF SOUGHT**

Petitioner asks the Court to:

- 1. Substitute the amended petition, filed with this motion, for the pro se personal restraint petition and accompanying documents filed in this Court on June 14, 2011;
- 2. Allow Petitioner a reasonable amount of time to obtain additional DNA testing of the evidence and file an amended brief and appendices in support of the amended petition, as specified in the Motion to Stay and Abey filed with this Motion; and
- 3. Allow the State an appropriate amount of time, pursuant to RAP 16.10, to respond to the amended petition and brief, after Petitioner's amended brief and appendices in support of the petition is filed.

**III. FACTS RELEVANT TO MOTION**

Jacqueline McMurtrie certifies as follows:

- 1. I am a licensed attorney in the state of Washington. I direct the Innocence Project Northwest (IPNW) Clinic at the University of Washington School of Law. The IPNW Clinic investigates and litigates claims on behalf of prisoners incarcerated in Washington State.
- 2. I am familiar with the files and records of In re the Personal Restraint of Lester Juan Griffin, Court of Appeals No. 420121-II, Clark County Case No. 08-1-00814-2.

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3. Mr. Griffin filed a pro se personal restraint petition and accompanying documents in this Court on June 14, 2011 under the above cause number.

4. Mr. Griffin also contacted the IPNW Clinic for assistance with his case. In mid-November, 2011, law students David Rubinstein and Eric Mapes were assigned to investigate Mr. Griffin's claim that he was not involved in the crime for which he was convicted. This investigation brought to light significant exculpatory evidence corroborating Mr. Griffin's account of the events, which we will explain in detail in the amended brief. It was also brought to light that DNA tests on the shell casings recovered from the crime scene could demonstrate Mr. Griffin's innocence on a more-probable-than-not basis. See Motion to Stay and Abey, filed with this Motion. DNA tests were never performed on the shell casings. Id.

5. The investigation also revealed that Clark County Prosecutors did not disclose to Mr. Griffin's trial attorney, Robert M. Vukanovich, information known to them that casts significant doubt on the credibility of former Vancouver Police Officer Jeffrey Wilken, the lead investigator in the case and one of the main witnesses against Mr. Griffin at trial. Specifically, the Clark County Prosecutor's office had, on July 26, 2000, filed a formal complaint against Mr. Wilken for making materially false

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statements under oath in Clark County Superior Court on May 19, 2000.

6. After obtaining this information, we contacted Mr. Griffin and advised him that the IPNW Clinic was willing to represent him in his post-conviction proceedings.

7. I spoke with Mr. Griffin on November 16, 2011, November 23, 2011 and December 5, 2011. We talked about the IPNW Clinic acting as his attorney. I explained that we would file an amended petition and brief and ask this Court to substitute the amended petition and brief for the pro se petition and accompanying brief. I told him we would not be proceeding on all the claims raised in his pro se writ of habeas corpus. We discussed the claims we would raise in the amended petition and brief.

8. Mr. Griffin agreed to have the IPNW Clinic act as his counsel in these proceedings. He agrees with this motion for leave to file the amended petition and brief and substitute it for the pro se petition filed in this Court. We will file a Verification of the amended petition as required in RAP 16.7(a)(6).

9. The mandate in Mr. Griffin's direct appeal was filed on December 10, 2010. The amended petition is filed within the one-year filing deadline of 10.73.090(3)(b).

10. Mr. Griffin's pro se personal restraint petition raised eight grounds for relief. Counsel for Mr. Griffin have modified the claims in the amended petition. The claims in the amended

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petition are similar in nature to grounds raised in the pro se petition.

11. On November 10, 2011, we contacted Anne Crusier and Jennifer Casey, counsel for the State, and advised them we were considering filing the amended petition. The State filed a motion to extend the time to file a response the same day. The State's response to the pro se petition is currently due on December 16, 2011. We request that the State be given an appropriate amount of time, pursuant to RAP 16.10, to respond to the amended petition and brief, after Petitioner's amended brief and appendices in support of the petition is filed.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 7th day of December, 2011 at Seattle, Washington.

  
\_\_\_\_\_  
Jacqueline McMurtrie, WSBA # 13587

**IV. GROUNDS FOR RELIEF AND ARGUMENT**

Mr. Griffin seeks leave to file an amended personal restraint petition and requests time to file an amended brief and appendix prepared by counsel. He asks that the amended personal restraint petition substitute for his pro se personal restraint petition and accompanying documents. Mr. Griffin's amendment is timely filed. His conviction became final on December 10, 2010, when this Court filed a mandate disposing of his direct appeal. RCW

1 10.73.090(c)(3). He is filing the amendment within the one-year statute of  
2 limitations. Id. None of the claims in the amendment are time-barred. RCW  
3 10.73.090, RCW 10.73.090.100. Mr. Griffin is filing his amendment before the  
4 State has filed its response to his pro se petition. He asks the Court to stay and  
5 abey this matter to allow time for scientific tests to be performed, and for the  
6 results of that testing and counsel's investigation to be incorporated into an  
7 amended brief in support of the amended petition, as detailed in the Motion to  
8 Stay and Abey filed with this Motion. He also asks that the Court grant an  
9 extension of time to the State to file a response to his amended petition after the  
10 amended brief and appendix are filed by counsel. Therefore, there is no  
11 prejudice to the State by allowing the amendment.  
12

13 RAP 16.10 permits the court to allow additional briefing at any time.  
14 The court rules are interpreted liberally. RAP 1.2(a), (c). There is no inherent  
15 unfairness to the State when the petitioner timely files a collateral attack and  
16 asks to file an amendment to the petition within the one-year statute of  
17 limitation. This is especially true when the State has not yet responded to the  
18 initial petition.

19 Mr. Griffin is filing his amendment within the one-year statute of  
20 limitations, shortly after retaining pro bono counsel. The claims in the  
21 amendment are similar to those raised by Mr. Griffin in his pro se personal  
22 restraint petition. However, the Court's consideration of Mr. Griffin's claims  
23 will benefit from the presence of counsel who are better able than is an  
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incarcerated petitioner to research legal claims and locate evidence to support them.

For the foregoing reasons, Mr. Griffin respectfully requests leave to file the amended petition filed with this motion and requests that it be substituted for the pro se personal restraint petition and accompanying documents filed in this Court. He also requests that this matter be stayed in order for his counsel to obtain further testing of physical evidence and incorporate the results in an amended brief, as specified in the Motion to Stay and Abey filed with this motion, and that the State be given an appropriate extension of time to respond after the amended brief and appendix are filed by counsel.

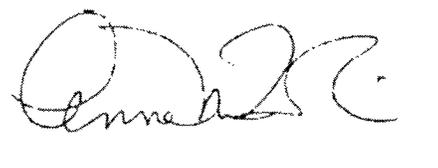
DATED this 7th day of December, 2011.

Respectfully Submitted,

INNOCENCE PROJECT NW CLINIC



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**CERTIFICATE OF SERVICE**

I certify that on the date listed below, I served by United States Mail, first-class postage, one copy of this Motion for Leave to File Amended Petition and Brief on the following:

Ms. Anne Cruser, Deputy Prosecuting Attorney  
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1013 Franklin Center  
P.O. Box 5000  
Vancouver WA 98666-5000

Mr. Lester Juan Griffin, #838731  
H5-B108  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

Dec. 8, 2011 Seattle, Washington  
Date and Place

Cynthia S. Fester  
Cynthia S. Fester

# Exhibit B

No. 420121-II  
(Direct Appeal No. 38978-9-11)  
Clark County Superior Court No. 07-1-00814-2

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

**In re Personal Restraint of**  
**LESTER JUAN GRIFFIN,**  
**Petitioner.**

---

**AMENDED PERSONAL RESTRAINT PETITION**

---

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Eric Mapes  
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Law Students

## **A. STATUS OF PETITIONER**

Petitioner Lester Juan Griffin is currently serving a sentence of 285 months imprisonment at Stafford Creek Correctional Center, 191 Constantine Way, Aberdeen, Washington 98520, and has petitioned this Court for relief from his unlawful conviction and sentence. The Court of Appeals, Division II, affirmed his conviction for first degree assault and attempted burglary with firearm enhancements on July 1, 2010. The Washington Supreme Court denied review on December 1, 2010. The mandate issued on December 10, 2010. Mr. Griffin remains in custody pursuant to that sentence.

1. Mr. Griffin was found guilty and convicted at a jury trial on one count of first degree assault, with a firearm sentence enhancement, and attempted first degree burglary, with a deadly weapon and firearm sentence enhancements, all in violation of RCW §§ 9A.08.020(3), 9A.28.020(1)(3)(b), 9A.36.011(1)(a), 9A.52.020(1)(a), 9.94A.533(3), and 9.94A.602.

2. The Judgment was entered on February 18, 2009 in *State v. Griffin*, cause number 07-1-00814-2. Clark County Superior Court Judge Robert A. Lewis imposed the sentence, ordering Mr. Griffin to serve a total prison term of 285 months.

3. Mr. Griffin's counsel for trial in the Superior Court was: Robert Vukanovich, WSBA No. 28847, 211 E. McLoughlin Blvd., Vancouver, WA 98663.

4. Mr. Griffin timely appealed the decision of the trial court to Division II of the Washington Court of Appeals in Case Number 38978-9-II. His attorney on appeal was: John A. Hays, WSBA No. 16654, 1402 Broadway Street, Longview, WA 98632.

5. Mr. Griffin filed a Petition for Review with the Washington Supreme Court Case Number 817944. On December 1, 2010, the Petition for Review was denied.

6. The mandate was filed on December 10, 2010.

7. Mr. Griffin filed his original Personal Restraint Petition on June 14, 2011. He submits this Amended Personal Restraint Petition to incorporate the grounds below pursuant to his Motion for Leave to File Amended Petition and Brief, filed herewith.

8. Mr. Griffin is also preparing to file a motion for post-conviction DNA testing, pursuant to RCW 10.73.170, with the Clark County Superior Court. For the reasons set forth in Mr. Griffin's accompanying Motion to Stay and Abey Personal Restraint Petition, he is also asking this Court to stay his personal restraint petition proceedings pending the resolution of his RCW 10.73.170 motion for post-conviction DNA testing.

## **B. GROUNDS FOR RELIEF**

Mr. Griffin has established six grounds upon which the Court should grant him relief from the conviction and sentence described in Part

### **FIRST GROUND**

Mr. Griffin should be given a new trial or released from confinement pursuant to RAP 16.4(c)(2), because the conviction was obtained and the sentence was imposed in violation of his right to effective assistance of counsel at trial and on appeal as guaranteed by the Sixth Amendment to the United States Constitution; and Article 1, section 22 of the Washington State Constitution.

### **SECOND GROUND**

Mr. Griffin should be given a new trial or released from confinement because pursuant to RAP 16.4(c)(3), material facts exist which have not been previously presented and heard, which establish Mr. Griffin's claims of actual innocence and in the interest of justice and to ensure due process require vacation of the conviction pursuant to the Fifth and Fourteenth Amendments to the United States Constitution; and Article 1, section 22 of the Washington State Constitution.

### **THIRD GROUND**

Mr. Griffin should be given a new trial or released from confinement because pursuant to RAP 16.4(c)(2), because the Prosecutor

committed misconduct in failing to disclose evidence of an exculpatory nature and/or necessary to establish bias or impeach the State's witnesses, and because the Prosecutor committed misconduct during closing arguments, all of which violated Mr. Griffin's rights to a fair trial and due process in violation of the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 3 and 22 of the Washington State Constitution.

**FOURTH GROUND**

Mr. Griffin should be given a new trial or released from confinement because pursuant to RAP 16.4(c)(2), because evidence in the form of photographs from a surveillance video (which was not provided to the defense) was misused at trial to support the State's false theory in violation of Mr. Griffin's rights to a fair trial and due process in violation of the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 3 and 22 of the Washington State Constitution.

**FIFTH GROUND**

Mr. Griffin should be given a new trial or released from confinement pursuant to RAP 16.4(c)(2), because he was denied the opportunity to effectively confront and cross-examine the State's witnesses, to adequately present a defense at trial, and to ensure the jury was accurately instructed in the law, all in violation his rights to

confrontation and due process required by the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 3 and 22 of the Washington State Constitution.

**SIXTH GROUND**

Mr. Griffin should be given a new trial or released from confinement pursuant to RAP 16.4 because the numerous errors in this case violated Petitioner's right to a fair trial under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 3 and 22 of the Washington State Constitution.

**C. STATEMENT OF FINANCES**

Mr. Griffin remains unable to pay the filing fees or fees of counsel. He has been deemed indigent by the Court (a Statement of Finances was filed on July 6, 2011). Counsel for Mr. Griffin is appearing pro bono. Mr. Griffin respectfully requests this Court to waive any fees levied by the Court as a result of this petition.

**D. REQUEST FOR RELIEF**

Mr. Griffin requests that this Court:

1. Grant his motion to amend his personal restraint petition and to stay the personal restraint petition proceedings, both filed simultaneously with this petition for personal restraint, until the

completion of Mr. Griffin's RCW 10.73.170 motion for post-conviction DNA proceedings in the Clark County Superior Court; or

2. If the Court does not grant his motion for stay, Mr. Griffin requests that he be allowed to file this amended personal restraint petition, and be given sufficient time to provide the Court with additional briefing and appendices which fully develop the legal and factual basis for his claims that his restraint is unlawful; or

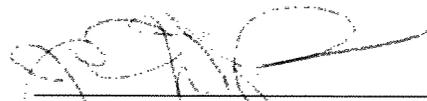
3. That the Court vacate his conviction. In the alternative, he asks that counsel be appointed and that discovery and an evidentiary hearing be ordered to resolve any factual disputes about Mr. Griffin's unlawful restraint.

**E. OATH**

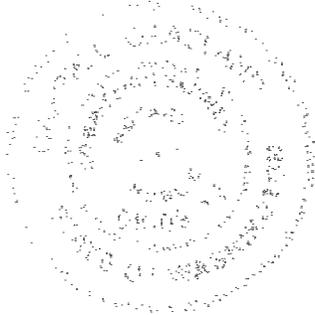
I, Jacqueline McMurtrie, after being first duly sworn, on oath, depose and say:

That I am Mr. Lester Griffin's attorney. I have read the Amended Petition; know its contents, and I believe the Amended Petition is true.

Dated this 7th day of December, 2011.

  
\_\_\_\_\_  
JACQUELINE McMURTRIE  
WSBA # 13587

Subscribed and sworn to before me this 7th day of December, 2011.



[Signature]

Printed Name: [Signature]

NOTARY PUBLIC in and for the State  
Of Washington, residing at:

[Signature]

My commission expires: 12/31/2012

**CERTIFICATE OF SERVICE**

I certify that on the date listed below, I served by United States Mail, first-class postage, one copy of this Amended Personal Restraint Petition on the following:

Ms. Anne Cruser, Deputy Prosecuting Attorney  
Office of the Clark County Prosecuting Attorney, Appellate  
Division  
1013 Franklin Center  
P.O. Box 5000  
Vancouver WA 98666-5000

Mr. Lester Juan Griffin, #838731  
H5-B108  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

Dec. 8, 2011, Seattle, Washington  
Date and Place

Cynthia S. Fester  
Cynthia S. Fester

# Exhibit C

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

IN THE MATTER OF THE PERSONAL RESTRAINT OF:  LESTER JUAN GRIFFIN,  Petitioner.	No. 420121-II  MOTION TO STAY AND ABEY PERSONAL RESTRAINT PETITION
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**I. IDENTITY OF MOVING PARTY**

Petitioner Lester Griffin, through his attorneys Jacqueline McMurtrie and Anna Tolin of the Innocence Project Northwest (IPNW) Clinic, seeks the relief designated in Part II, below.

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## II. RELIEF SOUGHT

Lester Griffin, through his attorneys, Jacqueline McMurtrie and Anna Tolin of the IPNW Clinic, filed an amended personal restraint petition simultaneously with this motion, which he requests be viewed as a “protective” petition. He further asks the Court to stay his petition and hold it in abeyance pending the conclusion of the proceedings related to his motion for post-conviction DNA testing under RCW 10.73.170, because DNA results will have a substantial impact upon his personal restraint petition. If the Clark County Superior Court grants his request for DNA testing of physical evidence from the shooting for which Mr. Griffin was convicted, the results will support the claims raised in Mr. Griffin’s “protective” petition. Conversely, in the unlikely event that Mr. Griffin’s DNA profile is found on other evidence found at the crime scene, the claims raised in his “protective” petition would be negatively impacted.

Mr. Griffin agrees that it would be reasonable for him to keep the Court apprised of the status of his post-conviction DNA proceedings in order for the Court to determine when the personal restraint petition proceedings should be resumed.

## III. FACTS RELEVANT TO MOTION

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Lester Griffin is serving a sentence of 285 months for first degree assault with a deadly weapon and attempted first degree burglary, crimes he insists he did not commit. *State v. Griffin*, 157 Wn. App. 1001, 2010 WL 2836703, at \*1 (2010); RP 528-29. Biological evidence in the possession of

1 the Vancouver Police Department and the Clark County Superior Court Clerk  
2 in Vancouver could exonerate Mr. Griffin if subjected to post-conviction DNA  
3 analysis. RP 164-65. Accordingly, Mr. Griffin will file a motion for post-  
4 conviction DNA testing, pursuant to RCW 10.73.170 in the Clark County  
5 Superior Court by February 29, 2012.

6 The incident for which Mr. Griffin was convicted occurred the night of  
7 May 17, 2008. RP 95. Two men pounded on the door to the home of Gary L.  
8 Atkinson, the victim, and forced their way into the house when he refused.  
9 Atkinson testified that both men were wearing blue-and-white bandanas over  
10 their faces. RP 95-96. Each holding a pistol, they ordered Mr. Atkinson to the  
11 floor. RP 100. Atkinson then attempted to run out of his house toward a  
12 neighbor's, and was shot once in the back as he fled, another bullet missing  
13 him. RP 107-108. After Atkinson arrived at his neighbor's house, the  
14 neighbor, Ronald Albertson, saw two people moving away from Atkinson's  
15 house. RP 147-50.

16 Atkinson positively identified Garry Alexander as one of his assailants,  
17 testifying at trial that he had met Alexander several times in the past, including  
18 in Atkinson's home, and that he recognized a tear-drop tattoo on Alexander's  
19 face. RP 102, 110-14. However, as a cooperating witness for the State,  
20 Alexander testified that he did not participate in the crime, but that Griffin had.  
21 RP 260-64. Alexander received a reduced sentence for his cooperation. RP  
22 285-86.

23 Police recovered two shell casings at the scene that were never tested  
24 for DNA evidence. RP 164-65, 355-372. Law enforcement recognized the  
25

1 significant evidentiary value of these items and had them dusted for  
2 fingerprints. RP 168. DNA results that show an individual other than Mr.  
3 Griffin loaded the weapon used to shoot Mr. Atkinson would refute the state's  
4 theory of the case and support Mr. Griffin's claim of innocence.

#### 5 **IV. GROUNDS FOR RELIEF AND ARGUMENT**

6 In order to preserve the constitutional claims raised in his "protective"  
7 petition, Mr. Griffin is obligated to file the petition within one year of  
8 December 10, 2010. RCW 10.73.090(1) prohibits collateral attacks against  
9 criminal judgments and sentences if not brought within one year after the  
10 judgment and sentence becomes final. *In re Pers. Restraint of LaChapelle*,  
11 153 Wn.2d 1, 6, 100 P.3d 805 (2004). Mr. Griffin's judgment and sentence  
12 became final on December 10, 2010, the date upon which this Court filed its  
13 mandate following his direct appeal. RCW 10.73.090(3)(b). He previously  
14 filed a Personal Restraint Petition on June 14, 2011, the amended version of  
15 which was filed simultaneously to this motion.  
16

17 In most instances, a petitioner would file an opening brief along with  
18 the petition. RAP 16.10 (a)(1). The appellate court would then serve the  
19 petition on the respondent and require the respondent to serve and file a  
20 response within 60 days after the petition is served, along with an answering  
21 brief. RAP 16.9; 16.10(b).<sup>1</sup> However, RAP 16.10 permits the court to allow  
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23  
24 <sup>1</sup> If an appellate court determines that the petition should be dismissed because it is time barred  
25 under RCW 10.73.090, or is barred as a successive petition under RCW 10.73.140, it can  
dismiss the petition without calling for a response. RAP 16.9.

1 additional briefing at any time. The court rules are interpreted liberally. RAP  
2 1.2(a), (c).

3 Mr. Griffin requests that the Court, pursuant to RAP 18.8, alter or  
4 waive the provisions of the rules and stay his petition and hold it in abeyance  
5 pending the conclusion of the Clark County Superior Court proceedings.  
6 Under RAP 18.8(a): “The appellate court may, on its own initiative, or on  
7 motion of a party, waive or alter the provisions of any of these rules and  
8 enlarge or shorten the time within which an act must be done in a particular  
9 case in order to serve the ends of justice . . . .”

10 Allowing Mr. Griffin’s post-conviction DNA proceedings to go  
11 forward prior to the resolution of the personal restraint petition proceedings  
12 will “serve the ends of justice” by conserving judicial resources and allowing  
13 the Court to consider the petition after all the facts necessary to resolve the  
14 petition are before the appellate court. The motion for post-conviction DNA  
15 testing is not brought on the same grounds as the constitutional claims and the  
16 newly discovered evidence claim Mr. Griffin raises in his “protective”  
17 petition. However, the DNA results will have a substantial impact upon these  
18 claims, and upon his assertion that he is innocent of these charges.

19 There is a strong likelihood that the results of these tests will  
20 demonstrate Mr. Griffin’s innocence on a more probable than not basis. It is  
21 possible to extract significant DNA evidence from a fingerprint. Jennifer J.  
22 Raymond, Claude Roux and Simon J. Walsh, *Friction Ridge Skin-Interaction*  
23 *Between Fingerprint Detection and DNA/Biological Material*, in Wiley  
24  
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1 Encyclopedia of Forensic Science [3] 1318 (A. Jaemison & Andre A.  
2 Moenssens eds. 2009). Indeed, DNA has been extracted from cells left on  
3 shell casings in several jurisdictions, including: Washington, Carol Smith,  
4 DNA advance very good at getting its man, Seattle Post-Intelligencer, August  
5 16, 2001. available at [http://www.seattlepi.com/local/article/DNA-advance-](http://www.seattlepi.com/local/article/DNA-advance-very-good-at-getting-its-man-1062978.php)  
6 [very-good-at-getting-its-man-1062978.php](http://www.seattlepi.com/local/article/DNA-advance-very-good-at-getting-its-man-1062978.php); Arkansas, *Smith v. State*, No.  
7 CACR 09-972, 2010 WL 728067, at \*2 (Ark. App. Mar. 3, 2010); and Ohio,  
8 *State v. Bolan*, No. 95807, 2011-Ohio-4501, 2011 WL 3925584, at \*2 (Ohio  
9 App. Sept. 8, 2011). DNA testing is even possible where the item has been  
10 previously dusted for fingerprints. David E. O. Van Hoofstat, et al., *DNA*  
11 *Typing of Fingerprints Using Capillary Electrophoresis: Effect of*  
12 *Dactyloscopic Powders*, 20 *Electrophoresis* 2870, 2870-76 (1999). In the  
13 instant case DNA testing could provide critical evidence relevant to the  
14 pending petition.

15  
16 If the Clark County Superior Court grants his request for DNA testing,  
17 the exclusion of Mr. Griffin as a source for DNA on items to be tested will  
18 support Mr. Griffin's claim of innocence. Conversely, in the unlikely event  
19 that a DNA profile found on these items matches Mr. Griffin, the claims raised  
20 in his "protective" petition would be negatively impacted.

21 Federal courts allow petitioners to file a "protective" petition when  
22 ongoing state proceedings raise any type of question regarding the statutory  
23 tolling of the filing deadline for a federal habeas petition. *Pace v.*  
24 *DiGuglielmo*, 544 U.S. 408, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005). In  
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*Pace*, the Supreme Court made clear that prisoners could not skip the State proceedings because they have a duty to exhaust State court remedies before filing a habeas petition.

A prisoner seeking State post-conviction relief might avoid this predicament, however, by filing a “protective” petition in federal court and asking the federal court to stay and abey the federal habeas proceedings until State remedies are exhausted. See *Rhines v. Weber*, 544 U.S. 269, 125 S. Ct. 1528, 1531, 161 L. Ed. 2d 440 (2005).

*Pace*, 125 S. Ct. at 1813.

Although Mr. Griffin is not required to file a motion for post-conviction DNA testing, the results of those tests will impact the claims he raises in his “protective” petition. He respectfully requests that this Court stay his petition and hold it in abeyance pending the conclusion of the proceedings related to his motion for post-conviction DNA testing under RCW 10.73.170.

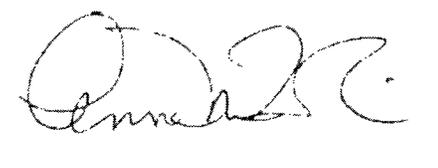
DATED this 7th day of December, 2011.

Respectfully Submitted.

INNOCENCE PROJECT NW CLINIC



Jacqueline McMurtrie, WSBA # 13587  
Attorney for Petitioner Griffin  
Innocence Project NW Clinic  
Univ. of WA School of Law  
P.O. Box 85110  
Seattle, WA 98145-1110  
(206) 543-5780  
Email: jackiem@uw.edu



Anna Tolin, WSBA # 22071  
Attorney for Petitioner Griffin  
Innocence Project NW Clinic  
Univ. of WA School of Law  
P.O. Box 85110  
Seattle, WA 98145-1110  
(206) 221-8411  
Email: atolin@uw.edu



# Exhibit D



# Washington State Court of Appeals Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454  
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, Issue Summaries, and General Information at <http://www.courts.wa.gov/courts>

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December 16, 2011

Jacqueline Mc Murtrie  
UW Law Clinic-Innocence Project NW  
PO Box 85110  
Seattle, WA 98145-1110  
jackiem@uw.edu

Anna M. Tolin  
Tolin Law Firm  
601 Union St Ste 4200  
Seattle, WA 98101-4036  
anna@tolinfirm.com

Anne Mowry Crusser  
Clark County Prosecuting Attorney  
PO Box 5000  
Vancouver, WA 98666-5000  
Anne.crusser@Clark.wa.gov

CASE #: 42012-1-II  
Personal Restraint Petition of: Lester Juan Griffin, Jr.

Counsel:

On the above date, this court entered the following notation ruling:

### **A RULING SIGNED BY COMMISSIONER SCHMIDT:**

Petitioner has moved to file an amended personal restraint petition and to stay this matter pending further DNA testing. Petitioner's motion to amend his petition is granted and his supplemental petition is accepted for filing. Petitioner's original petition will be placed in the file without action. Petitioner's motion to stay this petition pending the outcome of his request for post-conviction DNA testing is also granted and the pending response is no longer due. Petitioner must notify this court when the DNA testing issues have been resolved and move to file any further supplemental pleadings at that time. This court will then determine if any response is required. Petitioner should be aware, however, that any additional supplemental petitions will also be subject to the one year time bar stated in RCW 10.73.090. See *In re Benn*, 134 Wn.2d 868, 938-39 (1998).

Very truly yours,

A handwritten signature in black ink, appearing to read "David Ponzoha", with a stylized flourish at the end.

David C. Ponzoha  
Court Clerk

# Exhibit E

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

<p>IN THE MATTER OF THE PERSONAL RESTRAINT OF:</p> <p>LESTER JUAN GRIFFIN,</p> <p style="text-align: center;">Petitioner.</p>	<p>No. 420121-II</p> <p>MOTION TO LIFT STAY AND ABEYANCE AND TO SET BRIEFING SCHEDULE</p>
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**I. IDENTITY OF MOVING PARTY**

Petitioner Lester Juan Griffin, through his attorneys Jacqueline McMurtrie and Fernanda Torres, of the Innocence Project Northwest Clinic, seeks the relief designated in Part II, below.

**II. RELIEF SOUGHT**

Mr. Griffin asks this Court to lift the stay and abeyance entered on December 16, 2011 and allow his Personal Restraint Petition to move forward. He further requests that this Court set a briefing schedule for the parties as

1 follows: Petitioner to file Opening Brief in Support of Amended Personal  
2 Restraint Petition within 60 days from the date the stay is lifted; Respondent to  
3 file a response within 60 days of receiving service of Petitioner's brief; Petitioner  
4 may file a reply within 30 days of receiving service of Respondent's brief.

### 5 III. FACTS RELEVANT TO MOTION

6 On June 14, Mr. Griffin filed a *pro se* personal restraint petition and  
7 accompanying brief. The State requested an extension to December 16, 2011 to  
8 file a response. On December 9, the Innocence Project Northwest Clinic (IPNW)  
9 entered a Notice of Appearance and filed an Amended Personal Restraint Petition  
10 as a "protective" petition and a Motion to Stay and Abey the personal restraint  
11 proceedings pending resolution of a motion for postconviction DNA testing. On  
12 December 16, 2011 this Court granted Petitioner's motion to amend his personal  
13 restraint petition and accepted his supplemental petition for filing. The Court  
14 further granted Petitioner's motion to stay the matter pending the outcome of his  
15 request for post-conviction DNA testing. The Court directed Petitioner to notify  
16 the court when the DNA testing issues were resolved and to move to file any  
17 supplemental pleadings at that time.

18 Previously, IPNW identified shell casings recovered at the scene of the  
19 crime that had never been tested for DNA evidence. *See* Petitioner's Motion to  
20 Stay and Abey PRP, p. 3. Since that time, IPNW has learned that due to the  
21 handling of the shell casings during ballistics review, they cannot be tested for  
22 DNA. *See* Declaration of Jacqueline McMurtrie, attached hereto as Appendix  
23 A. No other pieces of evidence have been identified that could be subjected to  
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1 DNA testing. *See Id.* As such, Mr. Griffin will not be able to move forward  
2 with a Motion for Post-Conviction DNA testing at this time.

3 **IV. GROUNDS FOR RELIEF**

4 Given Petitioner's inability to move forward with DNA testing, it is now  
5 proper for Mr. Griffin's personal restraint proceedings to move forward for  
6 consideration, with leave for additional briefing. Here, Mr. Griffin filed a  
7 personal restraint petition, which he prepared without the benefit of counsel, and  
8 an opening brief in support thereof. The State never responded. Thereafter, this  
9 Court accepted Mr. Griffin's Amended Personal Restraint Petition and stayed  
10 the proceedings. RAP 16.10 permits the court to allow additional briefing at any  
11 time. The court rules are interpreted liberally. RAP 1.2 (a), (c). Petitioner has  
12 not filed an opening brief in support of the amended petition. There is no  
13 inherent unfairness to the State when the Petitioner timely files a collateral  
14 attack and asks to file an amended opening brief in support of the petition before  
15 the State has responded to the petition. For these reasons, Petitioner requests  
16 that the stay be lifted and this Court set the briefing schedule set forth in Part II,  
17 above, for the parties to have an opportunity to brief the issues raised in the  
18 amended petition.

19 DATED this 5<sup>th</sup> day of June, 2012.

20 Respectfully Submitted,

21 INNOCENCE PROJECT NW CLINIC

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23 M. Fernanda Torres, WSBA #34587

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**CERTIFICATE OF SERVICE**

I certify that on the date listed below, I served by United States Mail, first-class postage, one copy of this Motion to Lift Stay and Abeyance and to Set a Briefing Schedule on the following:

Ms. Anne Crusier, Deputy Prosecuting Attorney  
Office of the Clark County Prosecuting Attorney, Appellate Division  
1013 Franklin Center  
P.O. Box 5000  
Vancouver WA 98666-5000

Mr. Lester Juan Griffin, #838731  
H5-B108  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

6/6  
7/2012, Seattle, Washington  
Date and Place

Cynthia S. Fester  
Cynthia S. Fester

# APPENDIX A



1 Under the terms of the grant, Ms. Tolin's work is restricted to IPNW cases involving  
2 postconviction DNA issues.

3 3. On June 14, 2011, Mr. Griffin filed a *pro se* personal restraint petition with this Court and  
4 an accompanying brief.

5 4. The IPNW began investigating Mr. Griffin's case in the fall of 2012. Law students in the  
6 clinic were assigned to work on the case. We gathered and reviewed the police reports,  
7 trial transcripts and Washington State Patrol Crime Laboratory reports.

8 5. Based upon our review, we determined that Mr. Griffin's case had potential for  
9 postconviction DNA testing. The incident for which Mr. Griffin was convicted occurred  
10 the night of May 17, 2008. Two men pounded on the door to the home of Gary L.  
11 Atkinson, the victim, and forced their way into the house when he refused. Each holding  
12 a pistol, they ordered Mr. Atkinson to the floor. Atkinson then attempted to run out of his  
13 house toward a neighbor's, and was shot once in the back as he fled and another bullet  
14 missed him. When police arrived at the shooting scene, they recovered two shell casings  
15 and placed them into evidence. Law enforcement recognized the significant evidentiary  
16 value of these items and had them dusted for fingerprints. However, DNA testing was  
17 not conducted on the shell casings recovered from the crime scene.

18 6. On December 9, 2011, the IPNW entered a Notice of Appearance on behalf of Mr.  
19 Griffin. The IPNW filed an amended personal restraint petition and a motion to stay and  
20 abey the personal restraint proceedings pending resolution of a motion for postconviction  
21 DNA testing in Clark County Superior Court.

22 7. On December 15, 2011, Clark County Deputy Prosecuting Attorney Anne Cruser  
23 responded, indicating no objection except to request an extension of time to file the  
24 State's response.

1 8. On December 16, 2011, this Court granted Mr. Griffin's motion to amend the personal  
2 restraint petition and to stay the proceedings pending further DNA testing.

3 9. In January and February, the IPNW Clinic researched and drafted Mr. Griffin's motion  
4 for postconviction DNA testing of shell casings ejected from the guns used to shoot the  
5 victim and retrieved from the scene. We located several cases where forensic scientists  
6 were able to obtain a DNA profile from shell cases that identified a perpetrator, who was  
7 later charged and convicted. See e.g., State v. Norman, 162 Wn.App. 1039 (2011)  
8 (unpublished decision).

9 10. On March 20, 2012, I contacted Phil Hodge, the DNA QA Support Scientist, at the  
10 Washington State Patrol Crime Laboratory. I notified him that the IPNW had drafted the  
11 motion for postconviction DNA testing and asked to discuss proceeding forward with the  
12 testing. The IPNW and WSPCL have a collaborative working relationship and consult  
13 with each other on postconviction DNA cases. Moreover, when a court orders testing  
14 under RCW 10.73.170, the testing is conducted at the WSPCL.

15 11. On March 23, 2012, I spoke with Phil Hodge. We reviewed the facts of the case and  
16 discussed testing the shell casings. Mr. Hodge informed me that he had worked on cases  
17 where he was able to obtain DNA profiles from shell casings. However, he told me that  
18 he needed to speak with the scientist who conducted the ballistics testing. Mr. Hodge  
19 stated that the WSPCL used to put shell casings in a putty-like substance to stabilize the  
20 casings while the ballistics analysis was conducted. That process can result in wiping the  
21 DNA off of the casings, as well as contaminating the DNA. Mr. Hodge stated that the  
22 likelihood of getting anything other than a mixture under those circumstances is slim, but  
23 possible. The WSPCL's current protocol is to swab shell casings before putting them in  
24 the putty.

1 12. I was not aware, nor were any of my colleagues, of the WSPCL's past practice of using  
2 putty to stabilize shell casings during ballistics testing.

3 13. On April 9, 2012, Phil Hodge confirmed that the shell casings had been placed in the  
4 putty. He stated that the casings could not be tested for DNA due to the handling of shell  
5 casings during ballistics review.

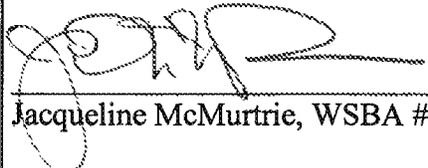
6 14. After receiving this new information, the IPNW conducted another review of Mr.  
7 Griffin's case to determine whether other items of evidence could be subjected to  
8 postconviction DNA testing. We contacted Anne Cruser in mid-May to request her  
9 agreement in entering a joint motion to lift the stay and set a briefing schedule.

10 15. On May 17, 2012 Anne Cruser responded by notifying the IPNW should lift the stay on  
11 its own.

12 16. With the possibility of DNA testing foreclosed, Anna Tolin will no longer be working on  
13 Mr. Griffin's case, and instead Staff Attorney Fernanda Torres will substitute for Ms.  
14 Tolin.

15 I declare under penalty of perjury under the laws of the State of Washington that the  
16 foregoing is true and correct.

17 Dated this 4<sup>th</sup> day of June, 2012 at Seattle, Washington.

18   
19 \_\_\_\_\_  
20 Jacqueline McMurtrie, WSBA #13587

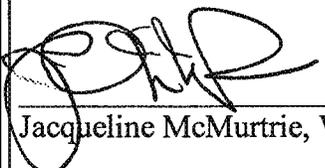
# Exhibit F



- 1 3. During January, February and March of 2012, the IPNW was actively pursuing post-conviction DNA testing on behalf of Mr. Griffin. After reviewing the police reports and  
2 trial transcripts, the first draft of the motion for post-conviction DNA testing was written  
3 on January 27, 2012. Subsequent drafts were written on February 2<sup>nd</sup>, 10<sup>th</sup>, 12<sup>th</sup>, 22<sup>nd</sup> and  
4 March 1<sup>st</sup> and 5<sup>th</sup>, 2012.
- 5 4. During this time period, Anna Tolin and I met weekly with law students Eric Mapes and  
6 David Rubenstein to discuss Mr. Griffin's case and advance the progression of the  
7 motion for post-conviction DNA testing.
- 8 5. We researched cases in which forensic scientists were able to obtain a DNA profile from  
9 shell cases that identified a perpetrator, who was later charged and convicted. *See e.g.,*  
10 *State v. Norman*, 162 Wn.App. 1039 (2011) (unpublished decision). In *Norman*, the  
11 Washington State Patrol Crime Laboratory conducted DNA tests in shell casings in  
12 January 2007 that matched Norman's DNA profile. The WSPCL expert calculated the  
13 likelihood of another person matching this DNA profile as 1 in 6.1 quadrillion.
- 14 6. It was our intention to file a motion for post-conviction DNA testing on behalf of Mr.  
15 Griffin in Clark County Superior Court. The evidence we were going to request that  
16 testing be conducted on was shell casings ejected from the guns used to shoot the victim  
17 and retrieved from the scene. We decided not to pursue testing after learning in April of  
18 2012 that the evidence was contaminated during the Washington State Patrol Crime  
19 Laboratory ballistics testing.

20 I declare under penalty of perjury under the laws of the State of Washington that the  
21 foregoing is true and correct.

22 Dated this 6<sup>th</sup> day of February, 2013 at Seattle, Washington.

23   
24 \_\_\_\_\_  
25 Jacqueline McMurtrie, WSBA #13587

# Exhibit G



# Washington State Court of Appeals Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4.

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June 12, 2012

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CASE #: 42012-1-II, Personal Restraint Petition of: Lester Juan Griffin, Jr.

Counsel:

On the above date, this court entered the following notation ruling:

### **A RULING BY COMMISSIONER SCHMIDT:**

Petitioner has moved to lift the stay in this case and for permission to file a supplemental petition. Petitioner's motions are granted. Petitioner should, however, be aware that the issues in the supplemental brief may be subject to the one-year time bar stated in RCW 10.73.090 if petitioner did not raise these same issues in a previous, timely petition. See *In re Pers. Restraint of Bonds*, 165 Wn.2d 135, 139-44 (2008).

Petitioner's supplemental petition is due within 60 days of the date of this ruling. The response to the supplemental petition is due within 60 days of service of the supplemental petition. Petitioner may, but is not required to, file a reply to the response within 30 days of service of the response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David Ponzoha', with a large, stylized flourish at the end.

David C. Ponzoha  
Court Clerk

# UW CLINICAL LAW PROGRAM

## February 06, 2013 - 3:55 PM

### Transmittal Letter

Document Uploaded: prp2-420121-Reply Brief.pdf

Case Name: Personal Restraint Petition of Lester Juan Griffin, Jr.

Court of Appeals Case Number: 42012-1

Is this a Personal Restraint Petition?  Yes  No

#### The document being Filed is:

- Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_\_
- Answer/Reply to Motion: \_\_\_\_\_
- Brief: Reply
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: \_\_\_\_\_

#### Comments:

No Comments were entered.

Sender Name: Maria F Torres - Email: [ftorres@uw.edu](mailto:ftorres@uw.edu)

A copy of this document has been emailed to the following addresses:

[Anne.cruiser@Clark.wa.gov](mailto:Anne.cruiser@Clark.wa.gov)