

Editorial: 11th Circuit Court's ruling gives too much power to prosecutors

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We're going to ask one thing of you in this editorial: Imagine you're arrested for a crime you didn't commit.

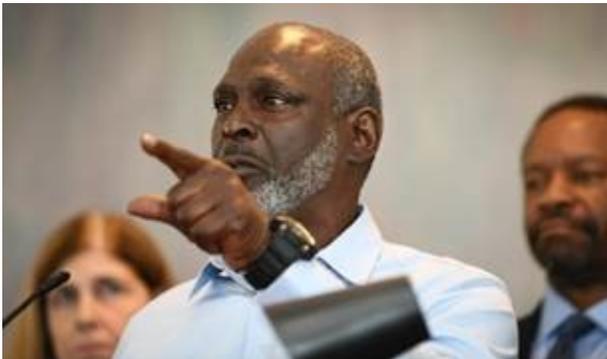
You can't believe you're in this position. But you trust the American justice system so much that when offered a chance to plea to a lesser charge, you say no.

During the investigation, evidence is found that might be just what your lawyer needs to poke holes in the prosecution's case against you.

But instead of turning that information over to your defense attorney, the prosecutor keeps it secret.

Now imagine there's a court precedent that allows the prosecutor to do that, to essentially cheat. The prosecutor gets to decide: this evidence isn't that critical to the defense and, if it turns out it is, well, that's what post-conviction arguments are for.

We may be facing that reality if the 11th Circuit Court of Appeals decision in the Crosley Green case stands.



Crosley Green is a Black man convicted of kidnapping a young white couple in northern Brevard County in 1989 and making them drive to an orange grove. There, the woman said, Green fatally shot her companion, Chip Flynn. The woman, Kim Hallock, escaped.

The problem: Hallock's story about what happened didn't match the evidence found in the grove.

Hallock described the assailant with features that are nothing like Green's except for the color of his skin. However, in a photo lineup, in which Green's photo is suggestively placed and darkened, she picks him. She was told the killer's photo was one of the six. Three people who testified against Green at trial later recanted, saying prosecutors coerced them. One of the responding deputies has believed so strongly in Green's innocence that even into retirement, she follows the case and comes to speak publicly on his behalf.

That same belief that Green is an innocent man is why a team of Washington, DC attorneys have been working pro bono on freeing Green for 13 years. As one of the chief lawyers, Keith Harrison of Crowell & Moring, told us recently: "It's a classic case about a racial hoax: The Black guy did it. You always want to believe that stuff never

really happens. The worst part, two of the first police officers basically told the prosecutor and all investigators, that that was exactly what was happening: This was a racial hoax. There was no Black guy, the girl did it."

Naively, in the beginning, Green's lawyers assumed getting Green's conviction overturned would be easy.

It's proven to be anything but. And that's where the problem lies.

A three-judge panel on the 11th Circuit overruled a 2018 decision that vacated Green's conviction because there had been a Brady violation in Green's trial. The Brady rule requires prosecutors to turn over any exculpatory evidence to the defense. In Green's case, prosecutors didn't turn over notes from the first responding deputies who suspected Hallock committed the crime — not Green.

One can only imagine how Green's defense lawyer might have used that information. And yes, we mean "only imagine" literally because we don't know. The defense wasn't given those notes.

The state appealed, and the 11th Circuit Court took a narrower view of the Brady rule and decided that the notes likely would have been immaterial; they also argued that Green hadn't properly exhausted his legal options in lower courts. Essentially, as Green's lawyers rightfully say, the 11th Circuit panel's decision seems to elevate process and form over substance.

If the 11th Circuit decision stands, it leaves us in a dangerous situation where prosecutors can judge what the defense needs to know. That's not American justice. That's why Green's attorneys have filed a petition asking all 11 active judges on the 11th Circuit to rehear the appeal. They need six of those judges to agree to a rehearing.

The 11th Circuit Court of Appeals has jurisdiction over federal cases from Georgia, Alabama and Florida.

Green has been out on house arrest since 2021 while his appeal was under review. He's working, spending time with his family, living peacefully. He's where he should be. And, honestly, he's probably where he would be — free — if he were not an innocent man. Why? Because he has come up for parole, but to get parole, you have to admit to your crime. Green won't, just as he wouldn't accept a plea.

Green didn't get a fair trial because prosecutors didn't turn over evidence that could have bolstered his defense; the odds were stacked against him. We count on prosecutors to seek justice but to do so fairly.

That's what you'd expect if you were in Green's position. That's what we should all expect.

This editorial was written on behalf of the FLORIDA TODAY Editorial Board which consists of Executive Editor Mara Bellaby, Engagement Editor John Torres, Sports Editor Tim Walters and Sr. Marketing Director Gina Kaiser.

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