

## Crowell & Moring Takes Murder Conviction Fight To Justices

By Andrea Keckley

*Law360 (January 20, 2023, 8:02 PM EST)* -- Following a recent setback before a federal appeals court in their nearly 15-year fight to clear a Florida man of murder charges, a team of Crowell & Moring LLP attorneys is asking the U.S. Supreme Court to side with claims that prosecutors withheld key evidence in their client's case.



Crosley Green and his family stand with his attorneys in Jacksonville, Florida, for oral arguments at the Eleventh Circuit in March 2020. The lawyers in the front row from left are Bob Rhoad of Nichols Liu LLP, and Keith Harrison, Jeane Thomas, and Vincent Galluzzo of Crowell & Moring LLP. (Courtesy of Crowell & Moring)

Crosley Green secured a fragile victory after a Florida federal judge ruled in 2018 that his constitutional rights had been violated when prosecutors failed to disclose that police had initially identified another suspect before accusing him of the 1989 killing of 22-year-old Charles "Chip" Flynn Jr.

After being released from prison in 2021 after more than three decades in custody, however, Green was

dealt a major blow in March after the Eleventh Circuit reversed his victory and reinstated his conviction.

As he and his colleagues look to take the case one more link up the judicial chain with a petition filed to the Supreme Court on Friday, Crowell partner Keith Harrison told Law360 recently that Green, who was previously sentenced to death before being resentenced to life in prison, maintained an unflagging sense of optimism.

"Even when I first met him on death row, he was always upbeat," said Harrison, who is handling the case alongside fellow Crowell partners Jeane Thomas, Vincent Galluzzo, Daniel Wolff and counsel Drake Morgan. "He was always confident that he would eventually be exonerated. And that spirit has really not changed."

The saga began on an April night in rural Florida in 1989 when Flynn met up with his on-again, off-again girlfriend, Kim Hallock. Before the sun came up the next morning, however, Flynn would be pronounced dead at a local hospital from a single gunshot wound to the chest. Hallock, the only witness to the homicide, told police that a Black man had killed Flynn, and she went on to pick Green's picture out of a photo lineup, according to court documents.

"The prosecution at trial had no physical evidence that there was any third person at the scene of the crime, let alone Crosley," Thomas told Law360.

At the heart of Green's fight for freedom is one key detail that was never disclosed to defense counsel prior to his trial: the first two officers to arrive on the scene following Flynn's murder suspected Hallock herself of being the shooter.

Instead, notes of prosecutors' regarding pretrial conversation they had with investigators were only turned over after Green's attorneys filed a public records request as Green exhausted his direct appeals and started pursuing post-conviction relief options, Thomas explained.

As Harrison worked to flesh out details about the police's initial investigation into the shooting, he told Law360 that he eventually worked up the nerve to knock on the door of one of the first two officers to arrive on the scene.

"I'm holding my breath, and he says, 'Come on in, I've been waiting 20 damn years for somebody to talk to me about this case,'" he recalled.

Green's trial attorney, John Parker, theorized that Hallock was the killer and knew much of the information that caused the officers to suspect her, according to court documents. Still, Green's defense says the evidence that the officers suspected Hallock was not disclosed by the prosecution. More specifically, they say the prosecutor did not disclose handwritten notes from a pretrial conversation with the officers.

It's conduct that Harrison said would've easily landed him in hot water during his days as a prosecutor in New York City.

"I was a prosecutor in the Manhattan District Attorney's Office, and Bob Morgenthau would have fired me in a heartbeat," Harrison said.

And in his 2018 decision granting Green's habeas petition, U.S. District Judge Roy Dalton agreed that

that evidence about the officers' initial suspicions regarding Hallock "went to the heart of the defense strategy."

"It is difficult to conceive of information more material to the defense and the development of defense strategy than the fact that the initial responding officers evaluated the totality of the evidence as suggesting that the investigation should be directed toward someone other than petitioner," he wrote.

The Eleventh Circuit did not see it the same way, however, pointing out that the idea of Hallock being the murderer had been "known and exploited" by Parker during the trial, and concluding the officers' suspicion that Hallock shot Flynn had been based on hearsay.

"[The officers] simply connected the dots much like Parker did in his argument to the jury at the close of the guilt-innocence phase of Green's trial," U.S. Circuit Judge Gerald Tjoflat wrote for the court.

As Harrison explains, the Eleventh Circuit ruled that the officers' statements suspecting Hallock of being the shooter did not need to be disclosed because they weren't admissible, as the statements were technically hearsay. But Harrison argues that even if the statements themselves weren't admissible, they still needed to be turned over to the defense because they could lead to the discovery of admissible evidence.

"Certainly, this was information that could have led to admissible evidence," he said. "The most important thing about these notes is that it would have converted two witnesses for the prosecution — those two police officers, one of whom actually testified at trial."

Thomas added that if Green's trial attorney had known about the suspicions the officers harbored about Hallock, they could have challenged the way the homicide investigation was conducted during the trial.

"It could have allowed the defense to really challenge — on the stand, in the courtroom, before the jury — the whole fundamental nature of the police investigation, which was targeted at finding a Black guy, and not even critically looking at whether ... this girl did it," she said.

A representative from the Florida Attorney General's Office, which originally prosecuted the case, did not respond to Law360's request for comment.

For now, Green has been allowed to remain free on federal supervised probation as the appeal moves forward, Harrison said, though it's likely that he would be forced to return to prison in the event the Supreme Court declines to hear his case. He wears an ankle bracelet and is mostly confined to his brother-in-law's home, with some ability to leave the premises to go to work and for personal shopping. His release from prison has allowed him to spend time with family members, including grandchildren he'd never met before. He leans on his faith to this day.

His attorneys, meanwhile, are hoping to ensure he remains free permanently.

"There's no reason this guy should be in prison ever again," Thomas said.

--Editing by Marygrace Anderson.