

## How Pro Bono Litigators Got Crosley Green Out of Prison

by Dan Roe

Crosley Green has every reason to be angry.

At age 32, the Titusville, Florida, man was convicted of a murder that he's maintained he didn't commit from the day he became a suspect. After declining to plead guilty in exchange for a 10-year sentence, Green was sentenced in 1990 to death.

Now 63 years old, Green walked out of the Calhoun Correctional Institution last week after a U.S. district court judge in Orlando ordered his release on the basis that Green had developed latent tuberculosis while awaiting a retrial, jeopardizing his health as COVID-19 spread through the facility. Green received an endorsement from the prison's warden, Heath Holland, saying the "model prisoner" was a danger to no one.

With his long-term freedom pending the outcome of a retrial in the U.S. Court of Appeals for the Eleventh Circuit, Green said he isn't angry at the prosecutors who withheld exculpatory



Crosley Green, center, with Crowell & Moring attorneys Keith Harrison, right, and Jeane Thomas, left. Courtesy photo

evidence. Or the all-white jury who convicted him. Or Kim Hallock, the white woman who, at age 19, said Green held her and ex-boyfriend Charles "Chip" Flynn at gunpoint on the bench seat of Flynn's pick-up while driving the stick-shift truck to an orange grove and killing Flynn with a semi-automatic handgun.

"I lost my anger way back," Green said in a statement provided by his attorneys at Crowell & Moring, the Am Law 100 law firm

that has contributed tens of thousands of pro bono hours to getting Green out of prison since taking his death penalty case in 2008.

"It began when I saw people that were concerned about my well-being, with being in the position that I was in," Green continued. "You can't get no better than something like that."

### 'There Was No Black Guy'

After his 1990 murder conviction, Green sat on death row for nearly two decades until

Crowell & Moring took his case on a referral from the American Bar Association's Death Penalty Representation Project. Partners Keith Harrison and Jeane Thomas began reviewing the case in 2008.

"It was pretty clear to me, when I read Kim Hallock's description of what happened that night," Harrison said in an interview. "I said to myself, 'look, I don't know what happened, but I know that's not what happened.'"

A former New York prosecutor, Harrison now represents companies in highly regulated industries like health care and pharmaceuticals. Thomas is a partner in the firm's antitrust and privacy and cybersecurity practice groups.

On his first read through the case, Harrison said he couldn't fathom how anyone believed Hallock's testimony.

"Her description didn't fit," Harrison said. "Of how the perp, 'the Black guy,' held a gun on them, drove a manual pick-up truck with a bench seat—he's got two kidnapped teenagers, 19-year-olds, sitting next to him. How in the heck is he driving the car and shifting gears while holding a gun on them? Unless he's got three hands, that really can't happen."

Part of the Crowell & Moring defense included that Green, according to witnesses, didn't know how to drive a manual transmission. His fingerprints were nowhere to be found on the truck or the gun. Police found no shell casings and the only bullet recovered

was that which killed Flynn. "It was pretty clear to me that there was no Black guy," Harrison said.

"He supposedly had an automatic weapon. Hallock said there was a gunfight, an exchange of fire at the crime scene. There were no other shells, no indication of a gunfight. The only gun there is Chip Flynn's gun, a .22, what he gets shot with," Harrison added.

Flynn had broken up with Hallock shortly before his death and had reportedly been seeing someone else. As he lay dying in the orange grove, Flynn told the two police officers who responded to Hallock's 911 call nothing about a perpetrator.

With Crowell & Moring's backing, the litigators got Green off death row in 2009.

Nine years later, in 2018, an Orlando court granted Green's petition for habeas corpus on the basis that prosecutors withheld exculpatory evidence: After Harrison and Thomas tracked them down in Florida and Tennessee, the responding police officers said they told the Brevard County prosecutors they thought Hallock killed Flynn.

The ruling required the prosecution to retry Green or release him. The state appealed the decision to the Eleventh Circuit, where his lawyers—who also included Florida counsel Mark Olive, of Tallahassee, and Crowell & Moring partner Vincent Galluzzo—moved to have him released pending appeal. That court

decided Green should stay in custody pending the outcome of his appeal, despite the fact that he is not convicted of a crime.

Harrison said he's optimistic Green won't go back to jail, but that the case will likely go on for another year or two.

"His release wasn't based solely on COVID," Harrison said. "One of the factors in this analysis is whether the appellant is likely to be successful in their appeal. And the court ruled that the state is unlikely to be successful in its appeal."

So why is the state of Florida so bent on keeping Crosley Green in jail? "It's a good question," Harrison said. "I can only speculate on why the state is persisting in attempts to keep him in prison."

According to Florida Today, Florida Attorney General Ashley Moody said Green would be safer if he remained in prison. A spokesperson for the Florida Attorney General's Office did not immediately respond to a request for comment on Green's release.

Hallock, for her part, couldn't be located for comment, but she said in a statement more than two decades ago, when Green was in prison, that "I'm sure deep down inside Crosley knows he is right where he deserves to be."

### **How Green Became a Suspect**

Hallock's initial description of the perpetrator was that of a young, athletic Black man. Green's brother, a high school football star, fit the description much better than Green, who was

rail-thin at the time, according to Harrison.

But Green's brother had more than 30 alibi witnesses the night of the murder. The prosecution dropped him as a suspect and used dog scent identification to identify their next suspect. The method has since been discredited as inaccurate.

"You're supposed to have a scent object, something from whoever you're trying to track. A T-shirt, a sock—the dog picks up on the scent and tracks it," Harrison said. "Well, they had no scent object because they had no suspect. The dog just started walking around and scented on those tracks."

The dog purportedly sniffed tracks—the type of which didn't match the only pair of shoes Green owned—traversing a baseball field, a park and a road, eventually leading the dog to Green's sister's house. "We later found out that Crosley's sister had dogs, one of which was in heat at the time," Harrison said.

With that, the prosecutors used a photo of Green taken in prison (he had recently been released for a low-level drug possession offense) and placed it on a sheet of paper containing five other headshots of Black men. Green's photo was the darkest, the smallest and dead center.

"As a former prosecutor, that's called the bullseye," Harrison said. "You would never put the person you wanted someone to

pick out in that spot because you'd be exposed to the argument that you put them there to get picked out. If it's in the corner, you have more confidence of making an accurate identification."

Thomas said the prosecution in Green's case also used "jailhouse confessions," coercing people in jail to agree to testify against someone else in exchange for a lighter sentence. In Green's case, his sister was in jail for a drug charge—she later admitted to falsely testifying against Green.

Green's is not the first Brevard County conviction to be reversed. In 1981, county prosecutors identified Wilton Dedge as the primary suspect in a sexual battery and burglary case. Like in Green's case, prosecutors used dog scent identification and jailhouse testimony to convict Dedge, who was exonerated in 2004 after he sought post-conviction DNA testing.

### **Pro Bono Pays Off**

Thomas said her dedication to pro bono work helped her choose Crowell & Moring in 1994.

"Before I accepted the position, I had been doing death penalty work since I was a student, and I asked the pro bono partner whether the firm would support my handling death penalty cases," she said in an interview. "And I was assured the firm would be supportive. We've done a number of these cases over the years and many people have been involved."

Of all of her death penalty cases, Thomas said Green's is the most unique for a number of reasons.

"Most of them have to do with Crosley," she said. "To be with him as he was released, as he literally walked out of prison and into the arms of his family. To be with him the next day, meeting grandchildren he'd never met before, reuniting with family he hadn't seen in 15 years—that is its own reward for all this hard work."

The case has spanned Galluzzo's entire career at Crowell & Moring, from summer associate to partner.

Harrison said if there is a retrial, the defense's nine alibi witnesses and testimony from the two officers who responded to the murder—and a lack of false confessions to sway the jury—should be enough to prove Green innocent.

Green said he kept his faith all those years "through the good Lord above," knowing he had supporters who believed in him.

"When you've got good people behind you, praying for you, and you're praying yourself," he said in a statement. "You have to believe something good is going to come out of that."

*I'm a reporter covering the business of law, focusing on Florida-based and national law firms for the Daily Business Review, The American Lawyer, Law.com and other ALM publications. Reach me at: droe@alm.com or on Twitter at @dan\_roe\_.*