

Inside An Atty's Plan To Get 2 Wrongfully Jailed Men Justice

By Marco Poggio

Law360 (July 22, 2022, 6:26 PM EDT) -- A single set of footprints in the snow — that was enough for a judge last year to conclude that three Black teenagers from Buffalo, New York, sent to prison for a 1976 murder didn't have a fair trial.

In 1977, Darryl Boyd, John Walker and Darryn Gibson were convicted by all-white juries for the robbery and murder of William Crawford, a 62-year-old white man who was beaten to death while walking home from a bar directly across the street. They spent more than 28, 22 and 32 years behind bars, respectively.



Darryl Boyd (third from left, bottom) and John Walker, Jr. (third from right, bottom) with their attorneys on the steps of Buffalo City Hall on July 7, 2022, during a press conference announcing the filing of their civil rights suits. Joel B. Rudin is second from right at the bottom. (Courtesy of Joel B. Rudin)

On Aug. 18, 2021, state Supreme Court Justice Christopher Burns overturned Boyd's and Walker's convictions. On the same day, the present Erie County District Attorney, John Flynn, dismissed the indictment against the defendants, saying he lacked evidence to retry them.

Gibson died of a heart attack in 2009, months after his release but years before his old friends' convictions could be overturned.

Boyd and Walker, now 62 and 63, respectively, filed suits this month against the City of Buffalo, the County of Erie and several former police detectives whom they accuse of using coerced confessions and violating due process. They each seek \$84 million in compensatory damages, plus \$28 million in punitive damages for the years they wasted behind bars.

"My friends and I were 16 years old when the detectives framed us. I lost the best years of my life and don't want this to ever happen to anyone else," Walker said in a statement.

In separate 96-page complaints filed in U.S. District Court for the Western District of New York, the two men allege detectives coerced Boyd and Walker's friends to testify falsely against them, and accuse the Buffalo Police Department and the Erie County District Attorney's Office of burying strong evidence that exonerated them and pointed to one of Crawford's neighbors as his killer. The suits rely on a narrow legal theory, known as the Monell doctrine, that allows plaintiffs in certain states to pierce through prosecutorial immunity and seek damages over civil rights violations.

"This was a kidnapping. We were taken from our families and never given a fair chance to show our innocence," Boyd said in a statement.

Alleged Misconduct Clouding the Criminal Cases

Crawford was bludgeoned to death in the early hours of Jan. 3, 1976. Five Black teenagers, who became known in the news media as the Buffalo Five — Boyd, Walker, Gibson, Floyd Martin and Tyrone Woodruff — were questioned by police. All except Woodruff, who became the prosecution's main witness in exchange for immunity, were tried for the crime.

In their complaints, Boyd and Walker allege BPD detectives illegally detained the five boys and turned one of them against the others, fabricating evidence and coercing confessions to build a case. The suits also accuse prosecutors with the Erie County District Attorney of never disclosing evidence favorable to the defendants, including two crucial crime scene photographs that undermined prosecutors' theory.

One of the photographs showed a single set of footprints made by a heavyset man in the snow in Crawford's backyard, leading toward the home of his neighbor two doors down, Larry Watson. Another showed no signs in the snow that Crawford had been dragged along his driveway, as Woodruff testified at trial.

Prosecutors never shared the photos with defense attorneys, except in the case against Martin, the last one of the teenagers to be tried. He was ultimately acquitted, in large part because his jurors had a chance to see the photos, according to a 2021 testimony provided by his attorney at the time, James A. W. McLeod, who later in his career served as a judge.

Decades after Boyd and Walker went to prison, a prominent Buffalo criminal defense attorney, Paul J. Cambria Jr., of Lipsitz Green Scime Cambria LLP, on Oct. 13, 2020, filed a motion to vacate their convictions based on their prior defense attorney's failure to request the photos and the prosecutors' failure to turn them over. The Erie County DA's office opposed the motion.

"The photograph eviscerated the people's theory that the co-defendants were together at the time the alleged robbery was committed," the motion says. "Had trial counsel made a proper discovery demand, the outcome of defendants' trials would certainly have been different."

After an evidentiary hearing, Justice Burns said McLeod's recollection of the photos by Martin's attorney — the actual photos have been lost by the district attorney's office — was enough to inject doubt into their criminal cases.

"The proof presented on the instant motion is far less than perfect due to the time that has passed and the ability to locate old records. Uncertainty abounds," Justice Burns said in the order. "The court finds the scales tip ever so slightly in favor of the defendants."

He added, "This is not an exoneration of the defendants."

Joel B. Rudin of the Law Offices of Joel B. Rudin PC, a prominent attorney **specializing in wrongful convictions** who is representing Boyd and Walker, said the photographs were only the tip of the iceberg of a case riddled with unethical and illegal conduct by prosecutors who fixated on the Black teenagers.

"This was just one of many pieces of evidence exonerating the Buffalo Five that the authorities did not disclose at the time of their trials in 1977," he said at a press conference in Buffalo on the day the suits were filed.

Rudin said he uncovered police reports showing that detectives knew Watson, a Black man in his 30s, had seen Crawford intoxicated and flashing a large wad of cash at the bar and later volunteered to walk him home, across the street. Police also allegedly knew Watson made false statements about his actions that night and had acted suspiciously. A set of keys was found on Crawford's body but were never vouchered, and investigators knew Watson had lost his own keys that night, Rudin said.

Despite that evidence, detectives turned to Boyd, Walker, Gibson and Martin, all of them 16 at the time. During their first interrogations, the teenagers largely corroborated each other's accounts that on the night of Crawford's murder, they were together playing cards at a friend's house until about 11:30 p.m., when Boyd and Woodruff took a cab home.

Police confirmed with the cab company that the car had picked up the two teenagers before Crawford was observed leaving the bar, and knew the name of the driver, but never set out to interview him, Rudin said.

The complaints allege police coerced Woodruff to blame his friends for the murder by falsely telling him that the other boys had accused him of the crime, and by isolating him from his family. Detectives allegedly told him that unless he turned on his friends, he would go to prison for the rest of his life, and offered him immunity from prosecution if he turned on them.

"Imagine that. Threatening a 17-year-old with life in prison but offering complete immunity to change his story," Rudin said.

The suits also accuse the police of staging a phone call in which an anonymous female caller said she personally saw Woodruff and his friends dividing up the proceeds from the robbery. Police records show that detectives allowed Woodruff to listen to the call, a practice, Rudin noted, that would imperil the witness — if one really existed.

"It's ridiculous to think that this was a genuine call," Rudin said.

But upon hearing the purported accusation, Woodruff started shaking with fear, to the point he could not even hold his coffee cup, according to police reports. He then began changing his story.

Police used similar tactics to extract a confession from 15-year-old Andre Hough, an eighth grader who hours before the murder was hanging out with Boyd and later walked with him to the Glenny Projects in Buffalo to watch TV at another friend's apartment, the suits say.

While the boys were held without bail before their trials, a man named William Crosby, who lived in the house directly between Crawford and Watson, was murdered. No arrests were made in that case, the complaints say, and no information about the killing of Crosby, who may have had information about Crawford's murder, was ever given to the lawyers defending Boyd and Walker.

Both Woodruff and Hough tried to recant their statements before testifying in front of a grand jury, but cops persuaded them to stick with the coerced confessions, the suits allege. They recanted their stories again after Boyd and Walker were convicted, but Erie County prosecutors successfully defended the convictions for years.

Answers to the complaints haven't been filed yet. The City of Buffalo and the BPD declined to comment.

Flynn, the current Erie County district attorney, denied that prosecutors in the Buffalo Five criminal trials engaged in misconduct and called the allegations in the suits "blatantly false" in a call with Law360. He largely blamed the teenagers' defense lawyers for their convictions.

"The prosecutors didn't do anything wrong at all," Flynn said. "I have 100 photographs that show multiple sets of footprints in the snow. If there is a photograph that shows only one set of footprints, it really wouldn't mean anything to me."

The Monell Doctrine at Work

The suits allege prosecutors in Crawford's murder trials knew they had an obligation to turn over evidence to the defense, but didn't do it. The U.S. Supreme Court ruled in [Brady v. Maryland](#), in 1963, that prosecutors have an obligation to turn over all potentially exculpatory evidence in a case to defense attorneys.

In 1976, while the Buffalo teenagers awaited trial, the Supreme Court further held in [United States v. Agurs](#) that prosecutors must turn over evidence favorable to defendants regardless of whether defense lawyers explicitly ask for it. Nevertheless, in the same year, in [Imbler v. Pachtman](#), the high court had also held that prosecutors are immune from civil suits, including for Brady violations, a ruling that still makes it difficult for victims of prosecutorial misconduct to recover damages.

"Prosecutors individually have absolute immunity, even where their misconduct is deliberate, and even when they violate an obligation that is clear-cut and absolute," Rudin said. "The question is, How can a wrongfully convicted criminal defendant recover damages if the cause of the harm was the misconduct of a prosecutor who cannot be sued?"

A path, Rudin said, can be found in a legal doctrine that originated under the 1978 Supreme Court's ruling in [Monell v. Department of Social Services](#), which held that local governments can be sued for damages. Following that decision, case law in the Second Circuit and a handful of sister courts developed the doctrine allowing people who were wrongfully prosecuted to seek damages from municipalities for the wrongdoing of prosecutors.

To prevail in a suit under Monell, civil plaintiffs must find that a municipal agency violated their constitutional rights as a matter of policy. One isolated incident is not enough — there must be a pattern. There is also another caveat: The Monell strategy only works in states where prosecutors are considered by state law to be municipal employees. New York is one of them.

Rudin and Ross E. Firsenebaum of WilmerHale, who have successfully argued Monell claims in the past, are now using the strategy in Boyd and Walker's cases.

In a Monell claim against the BPD, Boyd and Walker accuse the department of failing to deter officers from violating the constitutional rights of suspects and failing to discipline them when that happened.

"Detectives were encouraged to engage in such illegal activities by their knowledge that it would be at the very least tolerated and excused by BPD policymakers for whom closing high-profile cases with arrests was the priority," the suit says.

The complaints allege in their Monell claims against the Erie County District Attorney's Office that prosecutors, using a "baseless" narrowing of the Brady doctrine, routinely hid evidence favorable from defendants and built criminal cases on evidence they knew was fabricated.

To sustain the Monell claims, Rudin and his colleagues looked for reports of misconduct in court records and interviewed about 10 former prosecutors and defense attorneys from the 1970s in order to determine what the policies and practices were back then.

"We found more than 30 reported cases from the late 1960s to the early 1980s where the state and federal courts condemned misconduct by Erie County assistant DAs," Rudin said.

Rudin found that prosecutorial misconduct was a widespread phenomenon in New York throughout the 1970s and 1980s. U.S. Census data shows that, in 1980, Erie County had a population of more than 1 million people, about 154,000 less than the population of the Bronx the same year. Yet Rudin found in his research that Erie County had more cases of documented prosecutorial misconduct than the New York City borough.

In their suits, Boyd and Walker allege Erie County District Attorney's Office failed to train its attorneys on their obligation to disclose evidence and allowed such behavior to go unpunished, and at times rewarded unethical prosecutors with promotions.

"This policy of deliberate indifference created an anything-goes or winning-is-everything mentality," the twin complaints say.

Throughout his career, Rudin has brought successful Monell claims involving prosecutorial misconduct in the 1980s and 1990s against New York, Bronx, Queens and Kings counties.

"All of them had a history of indifference to misconduct that brought about unfair and unreliable convictions in serious criminal cases," he said. "The pattern in Erie County appears very much the same. The difference is that no one before has put Erie County under the same microscope."

Since the Second Circuit ruled in 1992 in [Walker v. City of New York](#) that district attorneys are county officials and can be sued under the Monell doctrine, this legal strategy has been increasingly used in **civil suits against law enforcement agencies**, in particular the New York Police Department.

Rudin was an early pursuer of Monell strategy in Alberto Ramos v. City of New York, in which the state's Appellate Division ruled in 1994 that the Bronx District Attorney's Office had a policy of tolerating Brady violations and summation misconduct by not disciplining prosecutors involved in those behaviors. As part of the discovery in that case, Rudin found that in 72 cases of prosecutorial misconduct, prosecutors were never disciplined for their actions, except in one case where an assistant district attorney was suspended, then reinstated and promoted.

The Ramos case was settled in 2003 for \$5 million. After that, Rudin brought similar cases against district attorney offices across the five boroughs, all of which ended with settlements, he said.

One of them, [Bellamy v. City of New York](#), openly challenged the Monell doctrine in the Second Circuit. The city argued that under Supreme Court precedent in [Van de Kamp v. Goldstein](#), a 2009 unanimous decision that reaffirmed prosecutors' immunity established in Imbler, the Queens District Attorney's Office could not be sued for misconduct. But the Second Circuit rejected that view in a ruling in 2019. The case was settled in December 2021.

Firsenebaum also relied on the Monell doctrine in a case involving former boxer Dewey Bozella, who was wrongfully convicted and imprisoned for 26 years for the 1977 burglary and murder of a 92-year-old woman before seeing his conviction overturned in 2009.

That case, which was settled for \$7.5 million in 2015 days before a civil trial was set to begin, challenged policies by the Dutchess County District Attorney's Office. At its core, that suit alleged Dutchess prosecutors had an unconstitutionally narrow Brady disclosure policy under which they only gave defense counsel evidence that truly exculpated the defendants and withheld other types of favorable evidence.

The Buffalo Five civil suits contain similar allegations against the Erie County District Attorney's Office.

"The material that we've identified as Brady evidence wasn't actually Brady evidence, in their opinion," Firsenebaum, who worked on the case pro bono along with other WilmerHale attorneys, said about Buffalo prosecutors.

While it's effective in a number of states, the Monell doctrine is not a silver bullet, however. Prosecutors cannot be sued in a majority of states where they are considered by law to be acting on behalf of the state, rather than a county. That's because, unlike counties, states are sovereign under the 11th Amendment and can be sued only when they give their permission. In New York's case, the Court of Claims is the venue for suing the state. Under Section 8B of the Court of Claims Act, individuals can sue state agencies for unjust convictions and recover damages.

The bar for such an action is high: A plaintiff must show that they are factually innocent of a crime and that the underlying criminal conviction was overturned in a way that is recognized under the statute. That leaves out cases overturned on technical grounds, or even on constitutional grounds that are not directly related to innocence.

Other states have also created processes to be sued for wrongful conviction, but the legal requirements for bringing claims are generally strict. Some states have caps on the amount of damage money a plaintiff can recover — for example, \$50,000 for each year spent in prison or a total cap. State courts usually award far fewer damages than juries.

So an action in federal court under Section 1983 of Title 42 of the U.S. Code, which allows the suing of government employees for constitutional violations, is often the best option for challenging prosecutors' misconduct, Rudin said.

The statute itself is deeply intertwined with civil rights history. Congress enacted it in 1871 on the heels of the Civil War to give freed Black slaves and white abolitionists in southern states a legal path to challenge racist local police departments and prosecutors in federal court.

As more district attorneys across the United States are creating conviction review units, Rudin said, civil actions are the best available tool to uncover prosecutorial misconduct.

"We hope to be able to expose the practices that existed in the '70s, '80s and '90s, that caused a lot of young Black men to be victimized, who were not guilty," Rudin said. "There are many examples like the Buffalo Five that are just waiting to be uncovered."

John Walker Jr. and Darryl Boyd are represented by Joel B. Rudin, David E. Rudin and Jacob Loup of the Law Offices of Joel B. Rudin PC and Ross E. Firsenebaum, Ryanne E. Perio, Gideon A. Hanft, Phoebe Silos and Erin Hughes of WilmerHale.

The cases are Darryl Boyd v. The City of Buffalo et al., case number 1:22-cv-00519, and John Walker Jr. v. The City of Buffalo et al., case number 1:22-cv-00520, in the U.S. District Court for the Western District of New York.

--Editing by Alanna Weissman and Jay Jackson Jr.