

WHO KILLED SCOTT MACKLEM?

Author's Note: Every wrongful conviction causes dual torment: the torment of the innocent yet imprisoned individual, and the social torment that the actual perpetrator remains free. This blog seeks to focus primarily on the latter, in the hope that we will gain more knowledge about the murderer of Scott Macklem.

This particular post focuses on the duties and responsibilities of the Michigan Attorney General in helping the citizens of our great state, answer the question posed in this blog.

Post #7: Let's Try and Find Out, Shall We?

Whether you are brand new to this blog, or brand new to the cause of the most egregious case of wrongful conviction in the State of Michigan, it was pretty tough to miss the outcry that followed the Michigan Attorney General Conviction **Integrity** Unit's abrupt decision to close their file on this case. As a lifelong litigator, my "knee-jerk" reaction was, "sue the bastards." Bad idea? I'll leave that up to experts in the civil rights arena.

What I want to discuss – what needs to be discussed – is the office of Attorney General doing their job. And I'm not referring to the CIU, and the fact that they took this case originally promising to follow one standard, then closed the case because in their view, the evidence didn't "match" the new and different standard they had switched to, tacitly and in mid-stream. I'm not referring to the fact that the chief attorney of the esteemed University of Michigan Innocence Clinic believes the CIU will no longer have any purpose if they are serious about the new and different standard they will be applying to cases going forward.

I'm not referring to the fact that an alibi witness hidden from the defendant since 1986 can place him in the Upper Peninsula much later in the pre-murder timeline than any other alibi witness, yet she is labeled "cumulative" by the Attorney General. I'm not even referring to the fact that the office of Attorney General completely and utterly contradicted itself numerous times in their communications with reference to the initial and ongoing analyses vs. the "final" analysis of this case. Or that they treat "actual innocence" like it's a term of art or "concept" up for debate. Actual means real. Innocence means not of guilt. There aren't many artistic or conceptual skills necessary to understand "actual innocence."

Everyone **knows** that Fred Freeman (aka Temujin Kensu) is actually innocent. Anyone who pretends to not know this, is doing exactly that: pretending. Pretending because it's more emotionally comfortable, pretending because it's more politically efficient, pretending because no one should care anymore,

pretending because it's a matter of self-preservation for the actual killer(s). Maybe I shouldn't be surprised that people are so comfortable pretending that a lie is the truth. Maybe surviving the last several years as a member of the American community should have sanded down my penchant for living in truth. It hasn't. Pretending doesn't impress me. When the top law enforcement officer in the State of Michigan is pretending, it's time to call her out.

My request is simple: do your damn job. As you tout on your official michigan.gov webpages, you are the state's "top lawyer and law enforcement official, protecting and serving the people" and interests of Michigan through a broad range of duties. So do some law enforcement in a case that sorely needs it.

This case is analogous to a "cold case," or unsolved murder. Many readers have probably watched TV shows, some dramas, some reality shows, about cold cases. Accepting the irrefutable truth of Freeman's actual innocence, this is an unsolved, cold case. What is the first thing that detectives (who are clearly law enforcement officers) do when they get a cold case to solve? They review the case file.

And what is the best thing to find in a cold case file? Forensic evidence. DNA is the most common type of forensic evidence. That's why you will often hear this case referred to as a "non-DNA" wrongful conviction. DNA has helped exonerate many wrongfully convicted individuals, more so than any other type of forensic evidence. This occurs when DNA recovered from a crime scene is analyzed using modern techniques, which were not available at the time the DNA was recovered and the crime originally investigated.

While DNA and its investigative offspring are worthy of praise and gratitude from truth seekers like me, other forms of forensic evidence shouldn't be overlooked when there is no DNA to (re-) analyze. Such as fingerprints. Such as the fingerprints found on the empty shotgun shell box found at the crime scene in **this** cold case.

That's right, there was an empty shotgun shell box found at this crime scene. Not surprisingly, the fingerprints didn't match Freeman. In 1986, there was no modern computerized network of fingerprints. When prints were found at a crime scene in 1986, in Port Huron Michigan, there might be a side-by-side visual analysis of fingerprints on file. But in this case, law enforcement "had their man" so there was never any analysis of those fingerprints, beyond confirming that they were not Freeman's.

It's been almost 36 years since those prints were found on that box. A lot has happened with fingerprint technology.

In 1988, a mere two years after this murder, Michigan created the Automated Fingerprint Identification System (A.F.I.S.) Policy Council, which was charged with

responsibility for creating policy and promulgating rules regarding the operation and audit procedures to be followed by agencies using the A.F.I.S. The Council was charged with additional responsibilities at the "tech" end of A.F.I.S., including establishing statewide parameters for using A.F.I.S., minimum standards for A.F.I.S. sites and installation, reviewing proposed applications for the A.F.I.S. technology, and the like. By 1999, A.F.I.S. was up and running nationally, overseen by the FBI, who maintains the national database.

A.F.I.S. is an automated fingerprint recognition system consisting of a computer database of fingerprint records, which is able to search and compare them to identify known or unknown fingerprints. Modern systems are able to search over a billion fingerprint records in a single second. A.F.I.S. is able to search the database for a complete or partial fingerprint and returns matching candidates. Although matches may be accompanied by "likelihood scores," the accuracy of matches on A.F.I.S. are almost 100%.

This begs the question: Why hasn't the Attorney General run the fingerprints found at this crime scene through A.F.I.S.? I'll admit, I've never directly asked that question of the Attorney General; but I'm told that the question has been "floated" if you will, in the plentiful communications that have occurred in this case. My understanding is that such a fingerprint analysis would have to be "ordered" or "sanctioned" by law enforcement.

Which brings me back to my original request that the Attorney General do her damn job. She describes herself (with Constitutional authority) as the state's top law enforcement official. So, do some regular law enforcement stuff and run the prints. Depending on the technology available to our state's top law enforcement official, this should take anywhere from a few minutes to a few hours. Not a lot to ask for someone who has spent 35 years in prison.

This is a cold case, Ms. Nessel. Pure and simple. And just from a logical standpoint, that box didn't belong at that scene for any other reason. Except maybe one: Some random hunter happened to sight his gun in, in the parking lot of a community college, coincidentally in the exact spot where a professional execution with a shotgun was going to occur the next morning. But now we're starting to sound like a prosecutor with ninja teleportation and secret flight theories, aren't we?

Let's face it, that box was there because it's connected to this crime. This very professional hit-style execution crime. And that box has fingerprints on it. What are the odds that those prints might match someone on A.F.I.S.? I'm no gambler but I know they're way better than the odds that Scott Macklem's murder is solved. Ms. Nessel, you don't need anyone else's consent, approval, or sanction; you only

need common sense to see that analyzing those prints is absolutely necessary. Do your damn job.

If you're still not convinced of your authority to perform this simple analysis, let me remind you that in Michigan's quest to improve and hone its crime solving skills, the state joined the Criminal Justice Information System (CJIS), which integrated other technologies, including A.F.I.S. with the Law Enforcement Information Network (LEIN). This occurred in 2009 and the enacting resolution and statute provide ample authority for your office bringing criminals to justice.

Indeed, the Attorney General is the top member of the CJIS Policy Council. I'm guessing that's because she is the top law enforcement official in the state. The top official focused on criminal justice. And the idea that the office of Attorney General is somehow controlled or limited by local law enforcement or prosecutors? Also debunked by statute.

MCL §14.30 puts the Attorney General in charge of local prosecutors. The statute says, "the attorney general shall supervise the work of, consult and advise the prosecuting attorneys, in all matters pertaining to the duties of their offices." Given this statutory authority over local prosecutors, against the backdrop of **your actual job description** and your office's inherent duty to seek criminal justice, I ask again: Do your job. Run the prints. It's necessary.

I'm not going to bore my readers with the plethora of additional statutory provisions which at minimum, imply your authority to take this simple action. This isn't about winning a legal argument; it's about solving a cold case. You're the top crime-solving dog in the state, you're an educated and intelligent woman, a talented public official, and a human being. Care enough about the truth to help really answer the question: Who killed Scott Macklem?