

Finley: Another Christmas behind bars for murder he couldn't have committed

Nolan Finley, The Detroit News Published 11:04 p.m. ET Dec. 25, 2019
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For the 33rd year, the bells that woke Temujin Kensu on Christmas morning were the harsh clangs that echo through the cell block as prisoners begin moving through their daily routine.

Kensu, 56, who changed his name from Fredrick Freeman after converting to Buddhism, hoped for a Christmas miracle this year that would finally set him free. But his wait continues.

He is serving a life sentence for a 1986 murder he couldn't have committed. The evidence of his innocence is massive, as is the consensus among legal experts who've reviewed the case that he was egregiously and wrongfully convicted.

And yet he remains locked up, unable to find any opening in the legal system that leads to freedom.



Temujin Kensu (Photo: MDOC)

"I'm 100% certain he didn't commit this crime," says Imran Syed of the University of Michigan's Innocence Clinic, which has been working for a decade to get the conviction overturned. "We approach every case with a great deal of skepticism; 89-90% of the claims we receive are false. But in this case, we have a very, very unfair trial that ignored overwhelming evidence that the person being tried wasn't even in the county when the murder was committed."

Kensu, who was found guilty of killing Scott Macklem, 21, in Port Huron, has had every appeal rebuffed, largely on technical grounds. Through three decades of appeals, he's never been able to convince a court to reexamine the obviously flawed evidence that convicted him of the crime.

On Christmas Day, I visited Kensu in the Macomb Correctional Facility in Lenox Township. I wanted to know how an innocent man copes with the incredible injustice of losing his freedom for something he didn't do.

"It's the people who keep me going," he says. "Every time I get down, someone comes along to lift me up. If I gave up, I'd jump off the fourth gallery or slit my wrist. A lot of people go crazy in here. But I'm a pretty positive person.

"And this is my favorite day of the year. I'm a Christmas baby; I just love Christmas."

To U.P. and back?

So how did Kensu end up marking most of his adult Christmases behind bars?

Macklem, the man he's accused of killing, was the son of a prominent St. Clair County politician. He was slain by a shotgun blast in a community college parking lot in Port Huron on the morning of Nov. 5, 1986. A pair of eyewitnesses got a fleeting glimpse of the killer as he fled in a late model Ford Escort.

Suspicion fell almost immediately on Kensu, who was the ex-boyfriend of Macklem's fiance and had a reputation for being a bad boy. He caroused, dabbled in martial arts and was cast as being jealous of his former lover's new relationship.

"I was the perfect patsy," says Kensu, who was a part-time musician. "A drifter, loser nobody."

But there was a huge hole in the case against him. The murder happened at 9 a.m. in Port Huron. Ten witnesses, many with no connection to Kensu, swore that just a few hours before and after the slaying they saw him near Escanaba, an Upper Peninsula town 450 miles away from the murder scene in the Thumb.

A friend testified he helped Kensu fix his car in a Big Boy parking lot at about 1 a.m., and a restaurant employee confirmed the story. Kensu had been out on a date with a high school girl, whom he dropped off at 3 a.m. after the car was fixed. She, too, corroborated Kensu's account. His then-girlfriend told police he was home with her at the time of the murder, providing another solid alibi. Oddly, neither the student nor the girlfriend were called to testify in his defense.

Escanaba to Port Huron is a seven- to eight-hour drive. The timing of the murder and the witnesses' sightings of Kensu in the U.P. seemingly made it impossible for him to get to Port Huron and back.

With the case falling apart, prosecutors pulled out the flying-carpet theory. They called to the stand a professional pilot to testify it was possible the defendant could have secretly chartered a private plane in Escanaba after 3 a.m., flown to Port Huron to kill Macklem at 9 a.m., and then flown back in time to be seen in the Upper Peninsula by noon.

No evidence was presented that Kensu had indeed chartered a plane. Nor was it explained to jurors where the stone broke defendant would have got the money to do so.

The case centered on two eyewitnesses, who saw the killer for no more than five seconds. One of those failed to pick Kensu out of a lineup. The other eventually identified him from photographs later determined to have been altered by police. That witness also was encouraged by police to undergo hypnosis to enhance his memory of what he saw.

“Whoever killed Scott Macklem knew him, and knew his routines,” Kensu says. “I never met him. I didn’t know what he looked like. And if I was the killer, where did I get the new Ford Escort, and what happened to it? I was broke. I drove beaters.”



Inmates get some Christmas Day exercise at the Macomb Correctional Facility in Lenox Township. (Photo: Nolan Finley / The Detroit News)

Jailhouse informant

No physical evidence connects Kensu to the crime. He agreed to take a polygraph, which he passed. A fingerprint on a shotgun shell found at the scene did not match Kensu's.

But what damned him appears to be the testimony of a jailhouse informant, a six-time felon who claimed Kensu confessed to the murder while they were together in a holding cell. A third inmate in the cell says the confession never happened, and the informant recanted his statement after the conviction, saying he was coerced by police on the promise of getting better treatment for himself.

"This is one of those rare cases where you read the trial transcript and can't believe the guy was convicted," Syed says. "Investigators get a theory in their heads and want to make everything fit the theory. The prosecution was based on the evidence they wanted, not on the evidence they had."

During the trial, a great deal of testimony was allowed attesting to the low quality of Kensu's character. He was described as having connections to ninja gangs in Canada. His ex-girlfriend was permitted to discuss his past abusive treatment of her.

Though the murder weapon was never found, prosecutors brought into the courtroom a variety of exotic weapons, from nunchucks to swords, and presented them to the jury as the type of things Kensu might have owned.

None of that testimony was relevant to the crime for which he was being tried, and shouldn't have been admitted, Syed says.

"But it was and it tainted the jury," he says. "Where the actual evidence of the crime was short, the prosecutor made up for it by muddying his character to make the jury think he was such a bad guy that he probably did it."

Kensu has filed numerous appeals, sometimes serving as his own attorney — he earned legal assistant and paralegal degrees in prison.

But appellate courts don't deal with the facts of the case or the credibility of the evidence. In most cases, they rule on procedural issues that center on whether the defendant received a fair trial, was not denied his civil rights, and whether newly discovered evidence would have changed the outcome of the verdict.

“Appeals are all about procedure; they don’t revisit the evidence,” says David Sanders, a board member of Michigan Innocence, a nonprofit that investigates wrongful convictions and has been working with Kensu for eight years. “If they did, Fred would be a free man.”

He also might be free had he had an adequate defense. But his court-appointed attorney had just got off probation in Ohio for a drug offense and was later disbarred in Michigan for abusing narcotics. Transcripts indicate the attorney was incoherent in court, and his trial notes are filled with random, bizarre ramblings. Still, the appeals courts rejected Kensu’s claims of an inadequate defense.

Kensu believes he was framed to protect Macklem’s family.

“All the evidence we’ve been able to find says Scott was using drugs and selling drugs,” he says. “And that’s why he was killed.”

He also believes his appeals have been hampered because the St. Clair County prosecutor at the time was Robert Cleland, who was later appointed to the Federal District Bench in Detroit. In one appeal, the entire bench in Detroit recused itself because the motion alleged prosecutorial misconduct.

A private investigator continues to search for new evidence that might be strong enough to support a motion for a retrial.

Both former governors Jennifer Granholm and Rick Snyder denied requests to either pardon Kensu or commute his sentence.

Syed says Kensu’s best hope now lies with the new Conviction Integrity Unit formed by Attorney General Dana Nessel, which is aggressively reviewing claims of wrongful convictions.

“I think he’ll eventually be released,” Syed says. “There’s more of a focus today on wrongful convictions.

“He’s a guy who will never give up. He’ll either be exonerated or fight to the day he dies.”

Life goes on

Asked what he’ll do if he is released, Kensu says, “I’ll probably cry like a baby. I just wish my wife was here to see it.”

Life has gone on for Kensu despite his lengthy incarceration. He married in 1990, while in prison, to a “beautiful green-eyed redhead” he courted through a pen pal relationship.

For 22 years, she visited him weekly, and when the prison rules were more liberal, they talked for hours each day on the phone. She died in 2012 of cancer.

“When she was alive we spent every Christmas Eve and Christmas together,” he says. “She was the perfect mate.”

He’s pretty much lost contact, though, with his three children, now in their 30s. Two were born before he was imprisoned, the third just after his arrest. All are now struggling.

“I always dreamed of being the father who spoiled his kids,” Kensu says. “I feel responsible for all they’ve went through. I have to wonder how not having a father, having a father in prison, affected them.

For a time, Kensu says the prison system allowed him to have musical equipment in his cell and access to a sewing machine to make his own clothes. But the rules have tightened, and now he’s limited to working in the gym and counseling other inmates.

He’s also kept busy suing the Department of Corrections for violating his civil rights. He’s won a half-dozen cases, including a religious discrimination claim that netted him a \$325,000 award. Currently he has suits pending charging the state is denying him medical treatment for a variety of ailments.

Like Syed, he believes freedom is at hand.

“I still believe in the system,” he says. “When I first was convicted, I really believed it would all be straightened out quickly and they’d let me go. Everybody who looked at my case told me I’d be getting out.

“I don’t know where my life would have gone had this not happened to me. But I know I have a good future ahead of me. I’ve got a lot of job offers from law firms.

“I’m a realist; there are a lot of people in here who will never change. But there also are a lot who do want to change, or who, like me, are innocent. I want to help them.”

'Miscarriage of justice'

The conviction of Fredrick Freeman, also known as Temujin Kinsu, has been reviewed by a number of legal experts. Here's a sampling of their conclusions:

► "Reading the trial transcript as an outsider, you just had this smell of the whole thing. I don't see how they could convict the guy. Had I been the trial judge, I hope I would have

had the guts to throw the case out.” – *Thomas Brennan, former Michigan Supreme Court Chief Justice*

▶ “After administering the polygraph exam to Fredrick Freeman, studying the case as to testimony, evidence, etc., in my opinion this is the worst case of a wrongful conviction ever seen in my 42 years in law enforcement.” – *Chester S. Romatowski, veteran Michigan State Police and Oakland County sheriff’s polygrapher*

▶ “I have personally reviewed the documents from the various court cases. As a lawyer, I believe the evidence of innocence is compelling.” – *former U.S. Senator Carl Levin, D-Detroit*

▶ “There is no doubt in my mind that Fredrick Freeman did not commit this murder. ... Mr. Freeman’s conviction and continued incarceration is a terrible miscarriage of justice.” – *Herbert C. Welser, retired Port Huron police detective lieutenant*

▶ “It is atrocious that this kind of miscarriage of justice could take place in our state, leaving an innocent individual in prison for multiple decades.” – *State Sen. Stephanie Chang, D-Detroit*

▶ “There’s no doubt that, the more you look at this case, it is essentially the ultimate template for wrongful convictions and the failures that lead to them.” – *William Proctor, founder of Proving Innocence and retired TV investigative reporter*

Compiled by Proving Innocence, a nonprofit that advocates for the wrongly convicted