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Wanted: Convictions At Any Price

by Gila Hayes

51-year old Ron Michaels didn't seem like a very lucky man in 2005 when, wrongfully accused, he was tried for murder. He was extremely fortunate in some regards, however, and one bit of luck was the informal networking between lawyers that put Michaels in contact with attorney Jim Fleming when he needed help most.

Fleming, now a Network Affiliated Attorney, spent about half an hour telling the story of defending Ron Michaels during a class at which I was present. Intrigued by Fleming's report, I sought more details in a book about the case entitled *The Bison King*. Together, these sources tell a story containing all the elements of a riveting drama—youthful indiscretions resurfacing decades later, lying cops and ambitious politicians, a lawyer obsessed with showing his client's innocence, and more.

After the bars close on August 11, 1979, some acquaintances continue socializing at the home of a woman and her fiancé who are part of the group. Four will play pivotal roles as events unfold. Two are close friends and they have a passing acquaintance from work with the third; the fourth does not know the other three, but is close to the fiancé of the woman hosting the after-closing party. He lives nearby, so decides to hang out at the party, since his girlfriend is working.

The 1972 Impala in which the first three are driving has a flat tire a couple of blocks from the party location, but alas, their spare tire is flat. After limping the car to the party, they walk to a nearby service station where they find a car of similar make and they steal a tire from it, leaving their tire behind.

The party goes on, the tire gets changed, and eventually the two close friends tell the work acquaintance that they're too drunk to drive him home, as earlier promised. The work acquaintance, not being particularly friendly with anyone else at the party, is irked and leaves on foot. His body is found about an hour later on the road about 2½ miles from the party, having bled out from a massive head wound. The body position, as Fleming diagrams, is at about a 45-degree angle to the road, with the head toward the center of the road, knees at the edge of the asphalt. He is dressed entirely in black, has dark hair, and is wearing nothing reflective. Beneath the huge scrape that ripped his scalp, the autopsy will reveal a basilar skull fracture an unusual injury, because it fractures the thickest bone in the skull, right at the base. The carotid arteries transverse that bone, and in this case, they ruptured, so he bled out rapidly.

21-year old Jeffrey Hammill is dead, and the cause of his demise will never be absolutely known. Without evidence of a struggle, blood spatter or defensive wounds, the coroner lists the cause as "unsolved, violent death." Law enforcement develops a list of 27 potential witnesses that include the young people in whose company Hammill spent his final hours: Ron Michaels, Jeff Cardinal, Debra Segler, Terry Olson, Dale Todd and several others. As word of the death spread, a couple comes forward to report that they drove past the highway scene at 3 a.m., and saw a few men standing around a car that looked like a Chevy Impala, with three taillights on each side, round on the bottom and flat on the top.

Law enforcement interviews and reports, the autopsy, and other evidence do not point conclusively homicide. The lead investigator on the case theorizes that Hammill was hit by something protruding from a vehicle. Sporadic investigation into the case continues over several years, yielding various theories, but nothing leads to a conclusion.

A Case Resurrected

Before the fateful night, Hammill fathered three children. One initiates a search for her birth parents, and braces the sheriff's office to explain why her biological father's death went unsolved. A sheriff's deputy digs up the old files and decides he is going to reopen the case, but he can't draft enough manpower to read through all of the old reports, re-interview everybody involved, and find something with which to restart the case. The Minnesota Bureau of Criminal Apprehension (BCA), however, has a cold case unit to which he appeals for help.

There he learns that BCA cannot involve the cold case unit in the investigation unless it is a homicide. The deputy goes to the county coroner, who, Fleming relates, "has written several books in which she talks about communication with dead people." The coroner reviews the death certificate, autopsy report and photos, and reclassifies it as homicide.

Law enforcement re-interviews Michaels, Olson and Todd. The latter two acknowledge being with the victim that night, admit the theft of the tire, and report that the victim left the party on foot around 3 a.m. Questioning Michaels yields little. Before developing severe fibromyalgia and chronic fatigue syndrome, Michaels was a state accounting manager, but he has become unable to work. His ill health has cost not only his job, but big blocks of his memory, as well. However, anyone who knew Michaels in his youth knew him as the guy who broke up fights, a peacemaker who literally was never in a fight in his life. Despite his disabling condition, Ron maintains a strong religious faith, a happy family life and a positive outlook.

In September of 2003, investigators interrogate Dale Todd, who submits to questioning without counsel present. Fleming describes Todd as a nice enough guy who is a bit below average intelligence, and tends toward emotional responses. Interrogation transcripts quoted in *The Bison King* clearly show the fear and confusion the questioning progressively creates in Todd. The detectives de-escalate the suspect, offering him alternative theories about involvement by his friend Terry Olson or Ron Michaels who he does not know, then getting him wound up again about going to prison. Eventually, they lead him to point at Ron's picture and implicate him in Hammill's death.

They tell Todd that in 1979 a baseball bat with blood and hair on it was found in the trunk of his car. "They told him it had the victim's blood and hair on it," Fleming exclaims. "That was a lie! There was a baseball bat in the trunk of his car, but it didn't have any blood on it; it didn't have any hair on it. They also told him that his car was seen out at the scene where the body was found," he adds.

In October, police visit the Michaels home and report that Dale Todd has implicated Ron and Terry Olson in Hammill's death. The Michaels get advice from their family lawyer, and he advises Wright County authorities to send further questions through him, while offering to talk with investigators and requesting updates on new details. Two years pass, and Ron is invited to testify before a Grand Jury, which the attorney advises against. On the 4th of October 2005, the Grand Jury returns multiple indictments against Michaels, Todd and Olson.

"The grand jury only hears from the witnesses that the State wants them to hear. The defendant is not there; the defendant's attorney is not there," explains Fleming. "What happened during the grand jury inquest? Well, the fellows from the BCA came in and told the jury the same lies about the baseball bat, the blood and hair on it, about the car that matched up, about the witness who saw the car, and about this false confession."

"As a result of that, my client and the other two guys were indicted for first degree murder," Fleming continues. The BCA approaches Dale Todd and offers to reduce his charges to obstruction of justice if he will tell the story at trial. "You'll do a year in prison, if we can get these two guys convicted," Fleming narrates.

A month later, Ron is at the door of his home with a friend from church, when suddenly police officers rush in, separate the two men, hold them at gunpoint and handcuff Ron. They tell Ron he is charged in the death of Jeffrey Hammill. He is taken to the county jail, 30 miles away, with such an abrupt departure that his front door is left hanging open.

Jim Fleming Gets Involved

From the police van, Ron notifies his wife, Jean, who calls their attorney. Their attorney responds that his schedule is too full and he does not feel he can commit the time necessary to Ron's defense. Jean's brother reaches out to his acquaintances, and before long, details of Ron's plight reach Jim Fleming, police officer turned lawyer.

A 1984 graduate of the University of Nebraska's law school, Fleming has argued death penalty appeals (one resulting in Nebraska's death penalty being declared unconstitutional due to its sporadic application). He'd moved his family and law practice to Minnesota in late 1991, where work and mutual interests associated him with the legal professionals to whom the request to step up and defend Ron Michaels was forwarded. "It didn't take me long in looking at this case to realize something was wrong with it," Fleming recalls.

The Michaels family can raise \$30,000 for Ron's defense. "Against my better judgment, I finally said, 'Look, if that's all you can do, that's all you can do. If you run out of money, you aren't going to run out of lawyer. I'll keep working on the case. Let's just see what we can do with it.' My thought was if I can take the inconsistencies in the case to the prosecutor, I can probably get them to drop the case."

Fleming goes to work on Dale Todd's false confession, as well as law enforcement reports of other interviews, expecting that he can get the prosecutor to drop the charges. Meanwhile, Ron Michaels, despite his frail physical condition, is incarcerated in the county jail; there he will remain for almost a year until his trial.

In the year between indictment and trial, Fleming strives to disprove the false confession. For one, he is convinced while the witnesses may have seen a car out there at 3 a.m., they could not have seen Hammill or Michaels. Witness statements conflict: Hammill could not have left the party house at 3 a.m. on foot and also be present 2½ miles away where the couple witnessed an Impala with a small group of people standing nearby when they drove by at 3 a.m. Fleming performs three timed trials walking at different speeds from the house to the death scene, establishing a range between 26 and 32 minutes to make that walk in the dark. Fleming's wife confirms the

times on a second stopwatch she sets when she drops him at the party house, then drives to the location of Hammill's death, where she waits reading a book by flashlight, while her husband walks the route.

Fleming remembers feeling like he couldn't sleep for the entire year in which he worked the case. One night while in bed, he suddenly questions the witnesses' descriptions of the car taillights, so he arises and makes a Google search for Chevy Impalas. Photos show that the taillights the witnesses described are inconsistent with the 1971 four-door Impala Dale Todd was driving at the time. Fleming confirms this discrepancy at a classic car restoration shop, learning that the taillights described by the witness were used only on one year's model, the 1968 Chevrolet Impala.

Fleming reviews the discrepancies with the prosecutors, who offer to reduce the charges from 1st degree murder to 2nd degree murder if Ron Michaels pleads guilty.

A Pivotal Moment

One night Fleming surprises Ron by visiting him in jail. Without preamble, he hands over photographs from the crime scene, including one showing the victim lying in a huge pool of blood. "I laid the pictures down in front of him, and I sat back to see what he was going to do." Fleming relates. "He reached down and picked up the pictures and he looked at them; all of a sudden he looked up at me with tears streaming down his face and all he had to say was, 'They think I did that?' Fleming marks this as the moment at which he was fully convinced of his client's innocence. He was staggered by the responsibility of defending Michaels.

"It's one thing when you are representing somebody you know is guilty, even if they want to go to trial. But what the hell do you do when you're representing somebody that you really believe is innocent and you start thinking, 'Can I do this? Am I going to be good enough to get this guy acquitted on this murder charge?' You don't sleep; you just don't sleep. I had quit smoking, and I started smoking again big time," he confesses.

Without much funding, Fleming can only use experts sparingly. One expert reviews Dale Todd's confession and declares it false, but points out that the defense can't afford to bring him in to give testimony. Fleming also consults with Dan Davis, an expert forensic pathologist, who, upon review of the autopsy report, photographs and other documentation explains to him why Hammill's basilar skull fracture doesn't support the theory of homicide and why he favors the hit-and-run theory.

"I said to him, 'I'm a fairly good sized guy, are you telling me that I can't take a baseball bat and step into it and snap my wrists at just the right time and hit this kid in the side of the head and fracture his skull?'" Fleming recounts his conversation with Davis.

"He said, 'You asked the wrong question, because the answer to that question, is yes, you can, but whatever fractured that skull had tremendous mass behind it. It was very heavy; it was moving really, really fast. The reason I know that is because that's not a crush fracture. That skull was crushed so quickly that his head couldn't get away from it and it literally torqued his skull to the point that it snapped through that basilar area. In order to do that, you have to have tremendous mass moving at tremendous speed. You couldn't do that with a baseball bat. In addition, you would have more external tissue damage and more fracturing alongside the head, and you don't have that. Whatever hit him, hit him fast, hit him hard, hit him dead and he bled out in a couple of minutes and he never knew what hit him.'

"I said, 'Like a piece of farm equipment being towed behind a truck?' And he said, 'Precisely, with something sticking out the side. He's along the road at 3 o'clock in the morning completely in black, with long black hair, so his face would not have been very visible, and you maybe have a tired farmer who's trying to move a piece of equipment from one field to another,'" Fleming narrated.

As he gathers evidence to refute the State's charges, Fleming approaches the prosecutor to show why the case against Michaels should be dropped. Authorities re-interview Dale Todd repeatedly, "six times from 2003 through the day of trial. And every time that I came up with a discrepancy, his next story cleared it up," Fleming relates. Eventually, the prosecution theorized that Michaels assaulted Hammill because he flirted with his fiancée at the party. The woman had worked the night shift at the Federal Cartridge Company in Anoka, MN that night, so was nowhere near the party.

Going to Trial

A year after Ron was taken to the county jail, his trial begins. His attorney's attempts to get the case dropped have been rebuffed and now a judge and jury will decide what did or did not happen on August 11, 1979. Now Fleming can refute the coroner's finding of "homicide," and scrutinize Dale Todd's confession. Sitting at the defense's table are Ron Michaels, Fleming and Jon Hawks, the attorney who referred the case to Fleming. Behind Fleming sits his younger brother, Rob, a public defender from Missouri with whom he has consulted from the beginning.

The night before Dale Todd is due on the witness stand, the brothers discuss the best way to conduct his cross-examination. In court the next day, Fleming initially asks about various inconsistencies in Todd's statements to the police, and the witness concurs with each of Fleming's points, confessing, "Yeah, I said something different here," Fleming relates.

The attorney observes that during the cross examination, Todd never meets his gaze, staring over his shoulder instead. “I finally turned around and looked over my shoulder and there’s a little old lady sitting there with tears running down her face: Mom. So I looked at him and I said, ‘You know, it occurs to me, that the reason you’re having so much trouble with all the discrepancies in all these different statements is that you really don’t know what happened out there that night, do you?’

“All of a sudden his head swivels around and he looks right at me, and he says, ‘No, I don’t.’ I said, ‘The reason you don’t know what happened out there that night is because you were never there, were you?’ He just went [Jim sighs deeply], ‘No I wasn’t,’ and I pointed at my client and said, ‘Neither was he, was he?’ and he said, ‘No he wasn’t there either.’”

Fleming knows the point is made, and tells the judge that he has no further questions. “The prosecutor jumps to her feet, slams both her fists on the counsel table, leans across and screams at him [Todd] in a shrill voice, ‘You lied?’ and he looked at her, and he said, ‘Yes, I lied.’ And she did it again, higher, and she said, ‘You lied?’ And he looked at her and now his face is getting red, and he said, ‘Yes, I did.’ Then she slammed her fists on the table again, leaned over the table and she said, ‘You lied?’

“I jumped to my feet and I said, ‘Your Honor, I object!’ I get carried away sometimes, because what I said actually is something you’re never supposed to say, but I was emotional. I jumped to my feet, and I said, ‘Your Honor, I object! How many goddamned times does she get to ask that question?’”

Jim pauses and gathers his thoughts. “Never do that. I got away with it once because of the drama of the moment. And the prosecutor looked at me and she looked back at him and asked, ‘Why?’ and he said, with tears running down his face now looking back at his mother, ‘Because I was scared and because they told me that if I didn’t tell this story that they wanted me to tell, that I was going to go to prison for the rest of my life.’ Then he looked at the jury and said, ‘But I can’t do it anymore. I can’t do it anymore. I’ve done enough, I feel ashamed of myself and these guys are the ones that are suffering for it and I’m not going to lie anymore. They weren’t there, and none of us had anything to do with it.’

“The courtroom goes crazy, the judge bangs the gavel on the table; I’m in a state of shock at that point in time. She called a recess and I just got up and walked out of the courtroom,” Fleming recalls. Imagine the surprise when, after the recess, the prosecution simply calls their next witness, proceeding as if nothing has happened.

In chambers, the judge and attorneys learn that the prosecutor’s boss, the county attorney, will not agree to drop the charges. Fleming recalls the prosecutor’s explanation, “Because the day these guys were arrested after the grand jury indictment, the county attorney jumps in his car and drives like mad to the State capital, and stands out in front of the state house with the governor of the State of Minnesota and the head of the BCA in a daisy chain in front of the TV cameras saying, ‘We’ve caught the individuals that perpetrated this heinous crime, this violent crime, and justice will be served,’ and so he wouldn’t let her dismiss the case,” he reports.

Both the prosecution and the defense present the rest of their evidence and witnesses, then give their summations. In his, Fleming reiterates the factual inconsistencies, and suggests that individual ambition and the BCA cold case unit’s pursuit of corporate funding drove the case to the extremes it has taken. The jury is sent away to deliberate; Fleming goes outside to smoke. To Fleming’s dismay, in less than half an hour the bailiff summons him to the courtroom. Brief deliberations usually herald a conviction, so Fleming is happily surprised when Michaels is acquitted of all charges against him.

“Good for Ron Michaels,” Fleming comments bitterly, “except for the fact that it almost devastated them financially. They’ve come up with the \$30,000 that they had to pay me; \$15,000 of which went to pay for my expert. My brother later said, ‘How does it feel to handle the biggest murder case you’re ever going to handle in your life for a \$15,000 fee?’ I said, ‘You know what? It feels pretty goddamned good. It really does,’” Fleming allows.

It’s over, right? Not exactly. Wright County, MN went on to try Terry Olson for murder, using a new confession from Dale Todd, this one extracted, Fleming notes, with Todd’s mother present. At Olson’s trial, Todd blamed his recantation on Fleming, saying, “Well, that wasn’t true, I just got tricked by a smart lawyer.”

Olson recently lost an appeal for a new trial. In the appeal, he argued that the deputy sheriff’s presence at the prosecution’s table was prejudicial, as he was not part of the legal team. In reality, he was likely there to keep Dale Todd in line and be sure he stuck to the story this time.

Also present in the courtroom throughout Ron Michaels’ trial was a childhood friend, Ken Miller. So troubled was he in the wake of the trial, that he wrote *The Bison King, Convictions of the Courageous*, the proceeds of which he has promised to help the Michaels family recover from their ordeal and to help get Terry Olson out of prison.

The book is available through the Network bookstore, or by a digital download version of the book online for \$12.99 at <http://tinyurl.com/mvwbne>. The publishing house’s press release about the book follows on page 14 of this journal, with full contact information.

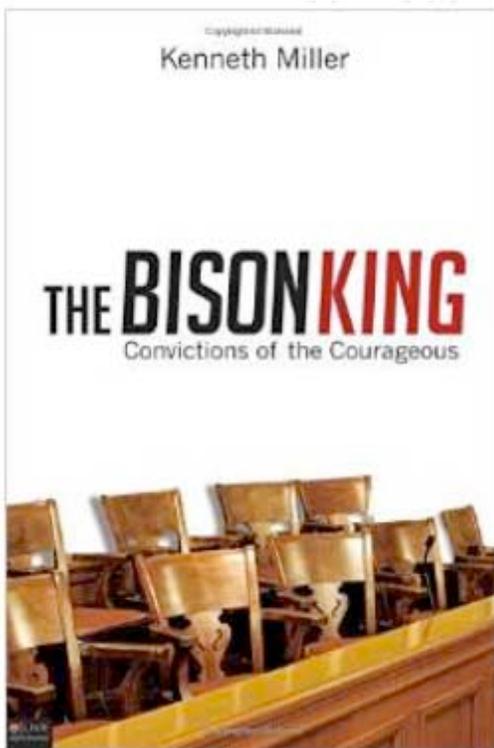
The Bison King Tells Chilling Tale

The *Bison King*, authored by former Wright County, MN resident Kenneth Miller, will be released by Tate Publishing and Ingram/Spring Arbor on August 11, 2009. The book is a non-fiction chronicle of the year long battle by Monticello, MN criminal defense attorney Jim Fleming and his legal team, to defend former Montrose, MN resident Ronald Michaels against first degree murder charges, stemming from the unsolved death of Buffalo, MN resident Jeffrey Hammill near Montrose, on August 11, 1979. The case was one of Minnesota's oldest "cold cases."

Miller, a childhood classmate and lifelong friend of Michaels, wrote the book as a first non-fiction work, to highlight what he believes to be deliberate, false accusations of murder against Michaels, the 1974 Homecoming King for the Buffalo High School Bisons (hence the title, "The Bison King"), and two other individuals. A subsequent trial involving co-defendant Terry Olson resulted in a conviction against Olson, based largely upon a confession by co-defendant Dale Todd, which Todd had previously recanted during the Michaels trial, testifying under oath for the first time, that he was pressured by state and local law enforcement officers, using fabricated evidence, to provide a false confession against both Michaels and Olson in exchange for leniency in his own case.

Although the Hammill death was originally investigated by the Wright County Sheriff's Office in 1979 and early 1980, then Chief Deputy James Powers eventually concluded that it was more likely the result of an accidental hit and run. However, the case was reopened in 2003 after Hammill's daughter began a search for her birth parents. During a discussion with a representative of the Wright County Sheriff's Office, she was told that her father had been murdered. Following a renewed investigation involving the Minnesota Bureau of Criminal Apprehension, a grand jury returned murder indictments against Michaels, Todd and Olson in 2005. Michaels spent over one year in the Wright County jail prior to his acquittal on all charges in November 2006. A Wright County trial jury took less than twenty minutes to agree with attorney Fleming's accusations during trial that the investigators had falsified evidence and that Michaels was innocent of any responsibility in Hammill's death. Author Miller remains convinced, based upon this evidence, that co-defendant Terry Olson now stands wrongly convicted and imprisoned for a crime that never happened.

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