

# MARTIN MACNEILL AND THE ALMOST PERFECT MURDER

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## Outline and Presentation Notes (UPAA Conference)

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### I. Central Legal Questions:

- A. Was Michele MacNeill murdered? And if so;
- B. Did Martin MacNeill do it?
- C. Homicide findings:
  - (1) **Disputed cause of death.**
    - (a) hypertension and myocarditis (autopsy finding);
    - (b) myocarditis and drug toxicity, however not “but for the drugs” expert testimony (second finding);
    - (c) drug overdose (possible); or
    - (d) drowning, facilitated by drug intoxication (third finding)  
\*\*\* prosecution’s primary theory \*\*\*
  - (2) **Undetermined manner of death.**
    - (a) natural causes (Dr. Frikke, at autopsy);
    - (b) accident;
    - (c) suicide (the defense stipulated Michele did not die from a suicide);
    - (d) homicide; or
    - (e) undetermined (meaning it could be any of the other manners of death) (Dr. Todd Grey and Dr. Joshua Perper).

### II. Applicable Law:

- A) Murder elements:

- (1) On or about 4/11/2007;
  - (2) In Utah;
  - (3) Martin MacNeill;
  - (4) (a) **Intentionally** or knowingly **caused the death** of Michele MacNeill,  
(b) Intending to cause serious bodily injury to Michele MacNeill,  
committed an act clearly dangerous to human life that caused her death, or  
(c) Acting under circumstances evidencing a depraved indifference to  
human life, knowingly engaged in conduct which created a grave risk of  
death to Michele MacNeill and thereby caused her death.
- B) But the prosecution is **not required to prove the specific means** of the victim's death; simply that the defendant caused her death.

**United States Supreme Court Case Law:**

- (1) **Anderson v. United States**, 170 U.S. 481 (1898). Alternate factual theories are acceptable and the law does not require a jury to be unanimous on the issue of how death occurs (unanimity on the facts not required).

FACTS: Two men involved in an argument on a shipping vessel off the coast of Brazil. One of them pulled out a gun and shot the other and then threw him overboard. The body was apparently never found and the question was whether the victim died of gun shot wounds or drowning. The Court held that proving the specific means of death did not matter because the prosecution need only prove that the defendant was the cause of the victim's death (whether by gunshot wounds, drowning, or both).

- (2) **Schad v. Arizona**, 501 U.S. 624 (1991). "We have never suggested that in returning general verdicts in such cases the jurors should be required to agree upon a single means of commission, any more than the indictments were required to specify one alone. Our cases reflect a long-established rule of the criminal law that an indictment need not specify which overt act, among several named, was the means by which a crime was committed." Id. at 631. In these cases, as in litigation generally, 'different jurors may be persuaded by different pieces of evidence, even when they agree upon the bottom line. Plainly there is no general requirement that the jury reach agreement on the preliminary factual issues which underlie the verdict.'" Id. at 631-32; quoting McKoy v. North Carolina, 494 U.S. 433, 449 (1990).

The Schad case also held that the prosecution can plead alternate mens rea

theories within a single charge and that a jury is not required to be unanimous on which theory applies when reaching a verdict.

**Utah Supreme Court Case Law:**

- (3) **State v. Russell**, 733 P.2d 162 (1987). “Many jurisdictions have considered the scope of the constitutional requirement of a unanimous jury verdict in criminal cases. These decisions are virtually unanimous that a defendant is not entitled to a unanimous verdict on the precise manner in which the crime was committed, or by which of several alternative methods or modes, or under which interpretation of evidence so long as there is substantial evidence to support each of the methods, modes, or manners charged.” Id. at 165.

The Russell court referred to a New York Court of Appeals case People v. Sullivan, 65 N.E. 989 (1903), “If the conclusion may be justified upon either of two interpretations of the evidence, the verdict cannot be impeached by showing that part of the jury proceeded upon one interpretation and part upon the other.”

“The rule has also been employed in cases of armed robbery where the jury was allowed to convict if they found that the defendant used force or simply threatened imminent use of force (citations omitted) [and] in cases where the jury was allowed to convict the defendant upon finding that he participated in the commission of the crime, either as a principal or an accessory or, in one case, as a conspirator (multiple citations omitted).” Id. at 166.

**Utah Court of Appeals Case Law:**

- (4) **State v. Pendergrass**, 803 P.2d 1261 (1990). Murder conviction upheld where the prosecution’s primary theory was that the defendant actually committed the murder. However, because the evidence also supported a theory that the murder may have involved more than one person, or that the defendant may not have directly cause the victim’s death, a jury instruction regarding accessories and accomplices was appropriate.

C) **No-body homicide cases (Utah Supreme Court).**

- (1) **State v. Archuleta**, 850 P.2d 1232, 1242 (Utah 1993). “We elaborated that the corpus delicti [a higher standard the prosecution no longer needs

to satisfy (in Utah)] of murder has only two components: (1) proof the victim is actually dead, and (2) proof that the death was caused by criminal means.”

- (2) **State v. Rebeterano**, 681 P.2d 1265, 1267 (Utah 1984). “The State has the burden of proving the corpus delicti of a crime, i.e., that ‘the injury specified in the crime occurred, and that such injury was caused by someone’s criminal conduct.’ **State v. Knoefler**, 563 P.2d 175 (Utah 1977) (footnote omitted).”

→ In Utah today, the doctrine of corpus delicti (“show me the body” no longer exists, and confessions to homicides not involving a body will be upheld if the confession is proven trustworthy.

D) **Summary (as applied to the MacNeill case):**

- (1) More than one possible, but supported, cause of death and inconclusive findings as to a victim’s cause and/or manner of death, need not doom a prosecution.
- (2) If it’s possible to successfully prosecute homicide cases where the victim’s body has never been found (and thus the State cannot prove the cause and manner of death), it must also be possible to successfully prosecute homicide cases when the evidence supports more than one cause of death and/or when the victim’s manner of death is undetermined.

III. **Limitations on Medical Examiners in Determining Cause and Manner of Death:**

- A) There exist **limitations on medical examiners in determining cause of death** (“**room for differing opinions**” (Dr. Todd Grey)), and there are “**special limitations**” (Dr. Grey) **in determining manner of death** (natural causes, accident, suicide, homicide or undetermined).
- B) A medical examiner’s role is to **examine evidence from the body and other factors are considered in a limited fashion**. In other words, he/she is  **tied to the body**, and thus the M.E.’s testimony as applied to the ultimate question of guilt or innocence of the defendant is only one piece of the puzzle in a murder case.
- C) Analogy to finding a **person dead at the bottom of a stairway or a cliff with no one else around**. At first glance it would appear that the victim probably died as the result of an accident or possibly a suicide, but then additional information is

found that supports a homicide finding. However, the M.E.'s opinion of the victim's manner of death will likely be limited to the findings on the body, which here would likely still limit the conclusion to an accident, suicide or now undetermined.

D) **MacNeill Case Cause and Manner of Conclusions:**

→ In MacNeill, we ultimately proved the cause of death was **drowning** facilitated by drug intoxication (**no evidence of myocarditis and the drowning diagnosis was supported “beyond a reasonable degree of medical certainty.”** – Dr. Joshua Perper).

- (1) **Michele throwing up water**, several cups, second expulsion being pink and frothy, suggestive of water from the lungs (not just the stomach).
- (2) **Dilution of chemical substances** in Michele's blood (upwards of 50%, approx. 30% above the 20% increase due to fluids administered in life-saving efforts) and her sodium and calcium levels weren't diluted because of the bicarbonate and calcium given to Michele by EMTs or emergency staff at the E.R.
- (3) **Michele's heavy lungs**, almost twice the normal weight, indicative of drowning.
- (4) The **quick occurrence of hemolysis**, a natural event after death but it occurred too quickly in Michele's case and thus it indicated drowning.
- (5) The **location and circumstances of Michele's death (bathtub full of water)**.

→ But there wasn't enough evidence from the body and the immediate known circumstances of Michele's death for a medical examiner to determine that she was the victim of a homicide, and thus **the jury was tasked with considering the evidence from the medical examiners, along with everything else, to find homicide** (“medical examiners do not ascribe guilt” – Dr. Grey).

IV. **SUCCESSFUL HOMICIDE PROSECUTIONS INVOLVING DISPUTED MANNER OF DEATH AND/OR UNDETERMINED CAUSE OF DEATH:**

- A) **Bobby Lozano (Texas)**. The victim died from a gunshot wound to the chest. M.E. concluded the manner of death was undetermined (possibly suicide or

accident). The prosecution was tasked with proving its case by disproving the victim died from any other means but homicide. Jury convicted Lozano of murder.

- B) **Matt Baker (Texas)**. M.E. originally found the manner of death was suicide then changed it to undetermined. Jury convicted Baker of murder.
- C) **Philong Huynh (California)**. M.E. ruled the probable cause of death was asphyxia but concluded the manner of death was undetermined. Jury convicted Huynh of murder.
- D) **Thomas Kessinger (Kentucky)**. M.E. could not determine a cause of death (or manner of death) due to the decomposition of the body. Jury convicted Kessinger of murder.
- E) **Brett Seacat (Kansas)**. M.E. was unable to determine manner of death. Seacat was convicted of murder in June 2013.
- F) **Douglas Grant (Arizona)**. M.E. marked the death undetermined. Jury convicted Grant of manslaughter.
- G) **Martin MacNeill (Utah)**. Case involving disputed causes and manner of death. Jury convicted MacNeill of murder and obstructing justice.
- H) **Dr. John Wall (Utah)**. 2015 jury trial involving a doctor defendant and a disputed manner of death. The victim died in a bathtub from drowning and had drugs in her system. Jury convicted Dr. Wall of murder.

→ The majority of these cases involved a strong motive to commit the homicide and evidence that the death scene was staged.

#### V. **Circumstantial Evidence Cases (and Motive):**

- A) **Direct & Circumstantial Evidence Jury Instruction.**

“Facts may be proved by direct and circumstantial evidence. **The law does not treat one type of evidence as better than the other** ... Before you can find the defendant guilty of any charge, there must be enough evidence – direct, circumstantial, or some of both – to convince you of the defendant’s guilt beyond a reasonable doubt. It is up to you to decide.”

→ Circumstantial evidence cases are not “weak” cases. The law treats circumstantial evidence and direct evidence the same and juries love circumstantial evidence cases. A compelling story will draw jurors in and almost compel them to connect the necessary dots and piece together the puzzle.

B) Motive Jury Instruction.

“Motive is why a person does something. **Motive is not an element of the crimes charged in this case.** As a result, the prosecutor does not have to prove why the defendant acted. **However, a motive or lack of motive may help you determine if the defendant did what he is charged with doing.**”

→ A compelling motive is almost always necessary to prove a difficult circumstantial case.

C) Circumstantial evidence (and motive) in MacNeill (including staging the scene).

1. **Affair with Gypsy Willis** (not simply a “fling” but a serious relationship).
2. **Gypsy’s emails** (escalation of the seriousness of the relationship right before Michele’s death and simultaneous to the time he’s pushing Michele to have plastic surgery).
3. **Moving Gypsy into the home** as the “nanny” almost immediately after Michele’s death.
4. **MacNeill’s statements to Rachel (daughter) on the day of Michele’s death that he wanted to hire a nanny, and statements to a friend of Michele’s at her funeral** that he already had a nurse friend (which was Gypsy) that he was going to bring in as the nanny, then the nanny review board with only Jillian MacNeill showing up for interviews.
5. MacNeill’s and Gypsy’s **temple scene masquerade** at the American Fork LDS temple.
6. MacNeill and Gypsy’s **staged “nanny hiring board.”**
7. **MacNeill’s explanation to Gypsy’s parents that he never loved Michele like he does Gypsy**, and his representations that Michele died in January, 2007.
8. **MacNeill’s letter to Gypsy’s mom** on May 7, 2007 expressing his love and eternal gratitude for her coming into his life.
9. **Federal, military ID application** with MacNeill’s and Gypsy’s alleged marriage date the day of Michele’s funeral date.
10. **Federal prison love letters between MacNeill and Gypsy** (e.g. I’ve loved you from the day we met” (they met in November, 2005), “You were worth everything I go through to get you back in my life,” “Let’s get

- married and shut these people up for once and for all.”
11. **Alexis overhearing a conversation** between MacNeill and Michele only days before her death **when Michele confronts him about having an affair with a woman named Gypsy** (with phone records) and his denials calling it ridiculous.  
**\*\*\* Alexis also testified that Michele confided in her in about mid-March that she suspected MacNeill was having an affair** (Alexis researching the number on MacNeill’s phone records (finding out it belonged to a Gypsy Willis) **and that she had confronted him about it.**
  12. **MacNeill pushing Michele’s plastic surgery despite her objections**, he introduced the idea to Michele, and argument in the car on the way to Dr. Thompson’s office prior to the surgery, and pre-op physical evidence (Dr. Von Welch).
  13. **MacNeill obtaining certain medications in excess of routine post-op prescriptions** from Dr. Scott Thompson.
  14. **MacNeill, a physician and the director of the Utah State Developmental Center, was uniquely skilled in administering drugs** – per Dr. Von Welch.
  15. **MacNeill’s overdose of Michele on the first night home from surgery** and need to get Alexis away from her mom – the first opportunity MacNeill had to be alone with Michele after the surgery.
  16. **Phone calls and texts between MacNeill and Gypsy during this time period, especially the night of the first overdose and during the funeral.**
  17. **Michele’s good health** other than slight hypertension (Dr. Von Welch and very limited case of myocarditis (she was not symptomatic), nothing in her tests, charts and history was suggestive of a significant cardiac event).
  18. **Michele’s upbeat future thinking attitude the night before and morning of her death** in speaking to Alexis (specific activities planned for later that day that would involve driving and spending time with her young children – she wouldn’t have taken the drugs herself).
  19. **Michele found dead under suspicious circumstances (bathtub with a number of drugs in her system) only the next morning after Alexis left**, the next opportunity MacNeill had to be alone with Michele.
  20. **Michele found dead in the bathtub at approximately mid-day with Ambien** (short half-life) **in her blood.**
  21. **Michele, an adult, found dead in a jacuzzi-style bathtub** where it would have been impossible to accidentally slip under the water and drown.
  22. **Virtually the same cocktail of drugs in Michele’s system at death compared to the first overdose** (especially the Ambien and the



- Phenergan (to stop her from vomiting) after she had tapered down to 1-2 Percocet tablets a day).
23. **Defendant's apparent attempt to establish an alibi on the morning of Michele's death** (changing the time of the awards ceremony and adamance about getting his photo taken that morning).
  24. **Opportunity to quickly get to and from his work and house** (between 3 minutes and 7 seconds and 5 minutes and 39 seconds depending on speed (with additional 1-2 minutes of walking time)). **MacNeill's unknown whereabouts for approximately 1 ½ hours** on the morning of Michele's death.
  25. **MacNeill's lies to 911 about performing CPR.**
  26. **MacNeill's claim he couldn't get Michele out of the bathtub**, statement to neighbor that needed a man's help.
  27. **MacNeill not properly performing CPR**, no chest rise or transfer of mucous from Michele to MacNeill (a doctor). **EMTs and officers perform CPR and she immediately expels water.**
  28. **Bizarre show of remorse in front of authorities, and \$10,000 offer to E.R. doctor to continue life-saving efforts on a clearly dead individual, and explanation in the E.R. that he was concerned Michele took too many medications** (Why? She was down to 1-2 Percocets a day!).
  29. **Blaming Michele for wanting the plastic surgery.**
  30. **Getting son's girlfriend to flush the rest of Michele's medication and throw away the Rx bottles. Alexis' black book documenting her care for Michele was also missing. MacNeill's explanation to Alexis that the police must've taken the medications.**
  31. **Lies to family and the M.E. about Michele's body position – making-up a story consistent with an accident.**
  32. **MacNeill telling Rachel (daughter) on the day of Michele's death that he was worried about a police investigation and that an autopsy needed to be done.**
  33. **Defendant's bizarre phone messages left with Alexis and Michele** (intercepted by Vanessa) on the morning of Michele's death.
  34. **MacNeill's new wedding ring as soon as he returned to work the next week.**
  35. **Defendant's statement to another mistress about his ability to administer a certain substance to a person to make it look like the person died from a heart attack.**