Defendant: Martin MacNeill

Victim(s): Michele MacNeill

Court Decision: Convicted of first-degree murder and obstruction of justice, with sentences of 15 years to life for murder and one to 15 years for obstruction. Additionally convicted of sexual abuse, with sentences to run consecutively, for a minimum total of 17 years.

Case facts:

The Crime

MacNeill lived with his wife, Michele, and their four minor daughters in Pleasant Grove, Utah. The MacNeills also had three adult children; two lived in Utah and one attended graduate school out of state. MacNeill practiced psychiatry, and Michele tended to their home and children.

MacNeill met Gypsy Gillian Willis online, and the two began an affair in November 2005. In March 2007 Michele expressed concern to her adult daughter, Alexis, who attended graduate school, that MacNeill might be having an affair. After reading through his telephone records, Michele discovered the identity of MacNeill's girlfriend. When she confronted MacNeill, he claimed she was being “ridiculous.” Shortly after this confrontation, MacNeill surprised Michele with a facelift as a “present.” He also indicated that he wanted to take her on a two-week cruise after her surgery.

Around the same time, during a “heartfelt, tearful lesson” at church, MacNeill announced that he had cancer and had “less than a year” to live. His health appeared to deteriorate—he began limping, walking with a cane, and wearing a surgical boot. Despite his claim to neighbors that he “had some procedures done [and] was having some complications,” MacNeill painted a somewhat different picture of his condition at work. He told one colleague that he had a “peripheral neuropathy” in his toe that “wouldn't get better,” another colleague that he had “cancer in his big toe,” and yet another colleague that he had a “neurological ․ problem similar to MS.” But despite his scattered claims of various illnesses during that spring, MacNeill remodeled his basement on his own and appeared to have no difficulty carrying “giant [slabs] of sheet rock” down the stairs.

MacNeill scheduled a consultation with a plastic surgeon in March 2007 and attended the consultation with Michele. MacNeill was the “dominant personality” at the appointment and did “more of the talking” than Michele. Although Michele was nervous about having surgery and concerned about the associated risks, the recovery, and the downtime, she agreed to schedule comprehensive facial surgery for the following month.

MacNeill next scheduled an examination for Michele with a primary care physician to determine if it was safe for her to proceed with surgery. MacNeill was anxious to complete the evaluation so Michele could proceed with the surgery without delay. At the appointment, the three discussed Michele's high blood pressure. The primary care physician said that it would be ideal to control Michele's blood pressure before surgery and suggested that she postpone the operation. MacNeill expressed disappointment with this suggestion. Other than Michele's elevated blood pressure, the primary care physician determined that she was in “excellent health.” An EKG revealed that Michele's heart was normal without any arrhythmias or evidence of heart disease.

Although the primary care physician recommended that Michele delay the procedure, Michele and MacNeill kept the appointment for the preoperative evaluation with the surgeon. Alexis came home from graduate school to attend the appointment with them. Before the appointment, Alexis saw MacNeill in his room writing down medications that he wanted the doctor to prescribe, using a “dusty” reference book that she hadn't seen him use in perhaps ten or fifteen years. On the way to the appointment, Michele said that she wanted to push the appointment back until summer so she could make sure her blood pressure would be under control. MacNeill became angry, raised his voice, told Michele she could not do that, and said, “If you don't have the surgery now, you're not getting it.”

At the appointment, neither Michele nor MacNeill disclosed the primary care physician's recommendations, although MacNeill did mention that she had “some high blood pressure” and “had been prescribed some medication” for it. MacNeill directed the discussion about Michele's postoperative medication regimen. After performing a facelift, the surgeon typically prescribed a pain reliever (Lortab), an antibiotic (cephalexin), a sleeping medication (Ambien), an anti-inflammatory (Medral Dose Pack), and an eye ointment (erythromycin). Occasionally, he prescribed an anti-nausea medication (Phenergan) to patients that complained of nausea associated with anesthesia.

Consulting the list he brought with him, MacNeill requested four deviations from the surgeon's usual protocol. First, he requested an additional, stronger pain reliever, oxycodone, also known as Percocet. Second, he requested Lortab in liquid form. Third, he requested more than the typical amount of Phenergan, and he requested it in suppository form. Finally, he requested the anti-anxiety drug, Valium. MacNeill said that “he was just concerned that [Michele] wouldn't do well without having these other options available,” and that he wanted to have “all of the options available to [him],” even though Michele had told him that she didn't like to take a lot of medicine. The surgeon complied with MacNeill's requests and gave Michele instructions to take one pill at a time and “certainly” to avoid taking all of them together. Michele assured the surgeon she “was going to try and minimize the amount of medication that she took.”

Two days later, MacNeill drove Michele and Alexis to the surgical facility for the operation. The surgery lasted all day, but the surgeon told Alexis that he was happy with the results. Michele was “in a little bit of pain and groggy” and “wanted to stay the night at the hospital.” MacNeill returned to drive Michele and Alexis home. When Michele said she wanted to stay the night, he became angry and told Michele that they needed to go home. But he acquiesced when the surgeon explained that he prefers to keep his patients overnight. The surgeon released Michele the next morning.

On the day Michele returned home, Alexis acted as her caregiver, giving her medications, dressing her wounds, and helping her to the bathroom, because Michele was “effectively blind.” Alexis kept a log of Michele's medications on a pad of paper and included the time she took each pill and the dose. Alexis also kept a log of Michele's vital signs and food intake in what she called her “little black book.” She later combined the two logs and placed the pad of paper in a drawer next to Michele's bed. That evening MacNeill insisted that Alexis leave the room because he would be taking over Michele's care. Alexis left and slept in her youngest sister's room.

The next morning Alexis entered her mother's room and noticed that she “appeared to be very sedated.” When Alexis tried to wake Michele, she stirred a bit but did not wake up. Alexis asked MacNeill what had happened, and he responded that he “must have given her too much medicine.” When Alexis pressed further, he said he had given Michele Lortab, Valium, and Ambien, at which point Michele threw up. He then gave her Phenergan, Percocet, and more Lortab. Alexis told her father that he was “not to give her any more medicine,” because she (Alexis) was “taking over.”

Later that evening Michele told Alexis that MacNeill “kept giving [her] medication” and “telling [her] to swallow,” and when she started to throw up he gave her more and more medication. Michele stated that she did not want MacNeill to give her any more medicine; she felt each different pill “so that if [MacNeill] tried to give her anything, she would know what he was giving her.”

Alexis continued to care for her mother. Once Michele's bandages came off, her recovery accelerated. By April 10 Michele was able to walk around and care for herself. She took no Valium, Phenergan, or Ambien. Because Michele was sensitive to medications, she tried to take less than the prescribed dosage. Although Michele was tapering off her medications, MacNeill called the surgeon and asked him to refill Michele's prescriptions for Percocet and Phenergan, which he did at a follow-up appointment. Alexis attended the appointment with Michele, then returned to school.

The next day MacNeill took the couple's younger daughters to school. Before leaving for school, one of the girls entered Michele's room and found her mother sitting on the couch in front of her TV. The girl noticed “nothing odd about [Michele's] behavior.” The two “had a perfectly ․ normal conversation” before the girl said goodbye and went to school. Alexis called at 8:45 a.m. and Michele said she was “doing great” and planned to pick the girls up from school. She did not sound confused, and her speech did not sound slurred. At 9:15 a.m., MacNeill called Alexis and left a voicemail urging her to call her mother and tell her to stay in bed. Alexis found this strange in light of her earlier phone conversation with her mother. Alexis called her mother, but Michele did not answer.

MacNeill was to receive an award at work that morning. Before the event MacNeill adamantly told the event coordinator that he needed his picture taken at the event. After receiving the award, he asked the photographer, “Did you get me in that picture? Make sure you got me in that picture.” After the photographer assured MacNeill that he was in the picture, MacNeill pressed him again, saying, “Maybe you better take a second one and make sure you got me in that picture.” After the event, MacNeill picked up the couple's youngest daughter from kindergarten at 11:30 a.m.

When MacNeill and his youngest daughter got home, she called, “Mom, I'm home.” Michele didn't answer. The girl followed her father into the bathroom and found her mother “all the way” in the bathtub, lying in the water, still in her clothes. MacNeill told his daughter to run next door for help.

Meanwhile, MacNeill called 911. MacNeill gave the dispatcher a false address and hung up. MacNeill called again and said, “My wife has fallen in the bathtub ․ [s]he is unconscious. She's under water.” MacNeill said he “couldn't lift her” so he let the water out of the tub. Although the dispatcher asked him to stay on the phone, MacNeill hung up again. The dispatcher called back, and MacNeill told her that he had “CPR in progress.” Although the dispatcher requested that he stay on the phone, MacNeill again hung up. He then called a colleague at work and told him he was “doing a code on his wife.” At this time, MacNeill's phone rang again—it was Alexis. He told her, “Your mother's in the tub and she's not breathing.” Alexis immediately went to the airport to fly home.

The daughter returned to the bathroom with their neighbor. They found MacNeill “hunched over” Michele's face. Michele was face up, her head under the faucet, her legs and feet inside the bathtub. Two more neighbors came in and observed Michele's body in the same position: face up, with her head under the faucet, and her legs and feet inside the bathtub. They lifted Michele out of the tub and MacNeill began CPR. One of the neighbors performed chest compressions while MacNeill leaned over Michele's head to periodically administer rescue breaths. However, the neighbor did not observe MacNeill's mouth ever touching Michele's, nor did Michele's chest rise and fall when MacNeill administered the rescue breaths. Two paramedics arrived and took over CPR. When the paramedics began CPR, Michele's color instantly changed from bluish to a pink fleshy color. A gurgling sound came from her chest, and she expelled quite a lot of fluid from her mouth more than once—at least three to four cups the first time and a substantial amount the second time.

While the paramedics performed CPR, MacNeill told them that he had only been away from the home “for a short period of time,” during which Michele “overdosed on her pain medication,” slipped in the tub, and hit her head. MacNeill said he found Michele face down, “slumped over the tub” with her upper body inside the tub and her lower body out of the tub. MacNeill then began yelling and became increasingly loud and agitated—to the point that the officers and paramedics feared for their safety and removed him from the room. Shortly thereafter, the ambulance arrived, and MacNeill accompanied Michele to the hospital.

Michele was pronounced dead on arrival. The emergency-room doctor saw no injuries consistent with falling into the bathtub. Because the doctor could not determine the cause of death, he called the Medical Examiner's Office.

The MacNeills' adult son returned home that evening with the son's girlfriend. MacNeill asked the two to accompany him to the bathroom where MacNeill had found Michele that morning. The son's girlfriend noticed that the bathroom was clean, with no trace of blood, although MacNeill told her when he found Michele that day “there was blood everywhere.” MacNeill asked the girlfriend to retrieve Michele's pills. She found various drugs, but some of the bottles had very few pills in them. MacNeill and his son counted the pills; MacNeill kept repeating, Michele “was not taking her pills.” MacNeill became frustrated, said he “did not want to do this anymore,” and had his son's girlfriend flush the pills down the toilet.

When Alexis returned home that evening, she went straight to the bedroom to look for the medications. But the room had been “cleaned out.” Items that had been there the day before—a hospital bed, stuffed animals, and blankets—had been removed. The bathroom rug was gone. While looking for her mother's medication around the house, Alexis found the bathroom rug, a pile of wet towels and clothing, and other of Michele's belongings in the garage.

Also gone was the “little black book” in which Alexis tracked her mother's medication intake. Alexis asked MacNeill where her mother's medication was; he told her, “I don't know. I think the police might have taken it.” Alexis found the small pad of paper she had tracked Michele's medication on for the first few days after surgery in the drawer where she left it.

When Alexis asked MacNeill what happened, he took her into the bathroom to show her how he found Michele. MacNeill gave Alexis the same description he had given the paramedics: Michele was face down, “slumped over the tub” with her upper body inside the tub and her lower body outside the tub. He told Alexis that the bath was full and the water was off.

Rachel, the MacNeills' other adult daughter, arrived later that evening. MacNeill said that they “needed to get the autopsy done ․ right away” because “he was concerned that there would be a police investigation,” and he “didn't want ․ anyone to think he murdered [Michele].”

Although MacNeill had spent his day performing CPR on his wife, accompanying her to the hospital, cleaning up her personal belongings, tending to his family, and providing his neighbors with a tour of the renovations he completed in the home, he also spent time that day communicating with Gypsy. The two talked on the phone twice and texted each other thirty times.

Several days later, MacNeill spoke with the Medical Examiner, Dr. Maureen Frikke. He gave the same account he had given the emergency responders and his daughters: he found Michele slumped over the tub with her face “completely submerged” and her lower body hanging outside of the tub. Dr. Frikke determined that the manner of Michele's death was “natural,” and her cause of death was cardiovascular disease with hypertension and myocarditis.

Michele's funeral was held three days later. Before the service, MacNeill helped set up, running back and forth from the church to his car without a cane. As people started arriving, however, he began limping and using the cane. Gypsy attended the funeral, and the two texted throughout the service. After the funeral, a family friend approached MacNeill and offered to help care for his minor daughters. MacNeill told her that he had already hired a nanny.

MacNeill's adult daughters also offered to care for their younger siblings, but MacNeill asked Rachel to go with him to church to “pray about getting a nanny.” When Rachel arrived, MacNeill did not want to go inside, but instead remained on a bench outside the church. Soon, a woman approached Rachel and MacNeill from the parking lot and said, “I'm so sorry for your loss. I was at the funeral.” She told them that her name was Gillian and that she had attended nursing school. MacNeill asked for her phone number, and “Gillian”—who was actually Gypsy Gillian Willis—left. Nine days after Michele's death, MacNeill hired Gypsy as the family nanny and moved her into the MacNeill home. However, Gypsy never fulfilled the role of a nanny in the MacNeill household—the children were “left alone” and took care of themselves.

Gypsy and MacNeill travelled to Wyoming, where Gypsy introduced him to her family as her fiancé. By the end of the summer she held herself out to the public as Gillian MacNeill. The two applied for an identification card that listed the date of their marriage as April 14, 2007—the day of Michele's funeral.

Having witnessed MacNeill's behavior after Michele's death, Alexis, Rachel, and Michele's sister asked investigators to re-examine Michele's manner of death. The Utah County Attorney's Office asked a toxicologist to examine Dr. Frikke's toxicology report from Michele's autopsy. The report stated that at the time of death, Michele's blood contained Valium, Percocet, Phenergan, and Ambien in concentrations likely to render her “severely obtunded,” “difficult to arouse,” potentially “asleep,” and “unable to respond constructively to [her] environment.” The Utah County Attorney's Office also asked Dr. Todd Grey, Dr. Frikke's successor, to review Dr. Frikke's conclusions. Dr. Grey changed the manner of death from “natural” to “undetermined” and changed her cause of death from heart disease to the combined effects of heart disease and drug toxicity.

In addition to re-examining the physical evidence, the State interviewed the MacNeills' youngest daughter at the Children's Justice Center. She reported that, on the day of Michele's death, MacNeill had picked her up from school and the two returned home to find Michele in the bathtub and still in her clothes. She explained that MacNeill asked her to go next door for help, and after she brought her neighbor back to the MacNeill home, the neighbor sent her next door to play with the neighbor's two children, where she remained for the rest of the afternoon. Following the CJC interview, state investigators requested that Alexis ask the girl several follow-up questions. Alexis complied, and the girl provided more detail about the position of Michele's body in the tub, the amount of water in the tub, and the items of clothing Michele was wearing.

The State charged MacNeill with murder, a first degree felony, and obstruction of justice, a second degree felony.

The Trial

Before trial, MacNeill moved to exclude the MacNeills' youngest daughter from testifying. MacNeill argued that, while questioning the girl after the CJC interview, Alexis had used improper interview techniques, resulting in “false memories.” The trial court granted MacNeill's motion in part and denied it in part. The court ruled that the girl was not competent to testify at trial because “after the Children's Justice Center interview, [the youngest MacNeill daughter] was subjected to suggestive and repeated questioning about material facts by an untrained interviewer with bias as to the suspect's guilt or innocence and bias as to her own pecuniary interests.” But the trial court admitted the girl's CJC interview, and she appeared in court at trial for cross-examination.

MacNeill also moved to exclude the testimony of five jailhouse informants that the prosecution planned to call. Four were federal inmates who had served time with MacNeill before the State charged him with murder. One (the State Inmate) knew MacNeill from time served together in the Utah County Jail. The trial court denied the motion on the ground that “(1) the weaknesses of jailhouse informant testimony could be exposed through rigorous cross-examination; and (2) the jury would be instructed on how to judge the credibility of witnesses, and may be instructed on the heightened motive of jailhouse informants to misrepresent.” The trial court also ordered that “the State, in writing, disclose to the defense with respect to each inmate who will testify, any and all benefits promised, expressed or implied, realized now or to be realized in the future, in exchange for testimony in the MacNeill case, together with any documentation of the deal.”

In response to the trial court's order, the State filed a Notice of Benefits Offered or Provided to Jailhouse Informants. The State disclosed consideration given to the State Inmate. It also represented—falsely, as it turned out—that the four federal inmates had not “requested any recommendations [from the State], nor has anyone else on [their] behalf. If any such request is made it will be honored. Other than that, there is no agreement to exchange [the federal inmates'] testimony for consideration from the State of Utah. Nothing has been given to [them], and there are no promises outstanding.”

On the first day of trial, the court ordered that all witnesses be excluded from the courtroom while not testifying and also ordered that “fact witnesses shall not watch or listen to television, radio, or internet news coverage of the trial while under trial subpoena.” The prosecution did not inform the federal inmates of the exclusion order for almost a week.

A. Medical Testimony

At trial a cardiologist testified that the inflammation in Michele's heart was “benign” and not “severe enough to present a significant risk of cardiac death.” Dr. Grey also testified that the inflammation was “not very severe.” The State called an expert in forensic pathology, who testified that he found no evidence of myocarditis. The expert also presented a new theory on Michele's cause of death: drowning.

The forensic pathologist based his conclusion on five facts. First, Michele regurgitated large amounts of water while emergency responders performed CPR, indicating that she had swallowed water. Second, she had water in her airway, which indicated that she had inhaled a significant amount of water. Third, her lungs were twice as heavy as typical lungs. Fourth, fluid was found in the chambers of her lungs. Finally, her blood was significantly diluted, which occurs when someone inhales water and it streams into the blood vessels and into general circulation.

B. The Jailhouse Informants

All five jailhouse informants testified against MacNeill.[4](https://caselaw.findlaw.com/court/ut-court-of-appeals/1853341.html#footnote_4) Inmate One testified that he knew MacNeill from a prison computer class. One night, Inmate One saw a picture of MacNeill on a television news show, and while he could not hear the audio, he could tell that the show claimed that MacNeill had murdered his wife. When Inmate One told MacNeill about the television show, MacNeill replied that “[t]hey're just [running the show] because my girlfriend is about to get out.” But MacNeill later “opened up about it.” He said that he “gave [his wife] some oxy and some sleeping pills and then he ․ got her in the bathtub.” MacNeill then said “he had to help her out,” and he “held her head under the water for a little while.” When Inmate One asked MacNeill why he killed Michele, MacNeill responded that “she was in the way” and “she wanted the house and the kids,” but that the authorities “couldn't prove that he ․ did anything.”

Inmate One testified that he had not “made any request for any consideration.” MacNeill cross-examined Inmate One using phone records he had obtained from the prison. In one phone call Inmate One told his mother that the State was going to offer him a deal, and he would speak with his lawyer to find out the details of the deal. In numerous phone calls, he told family members that he planned on being released from prison by Christmas in exchange for his testimony because MacNeill's trial was scheduled for October 9 to November 9, and he would have “from November 9 up until Christmas to get out.” And in a phone call with his federal defense investigator, Inmate One explained that Jeff Robinson, the Utah County Attorney's Office investigator assigned to MacNeill's case, had told him that he was “willing to help [Inmate One] out in any way that he could.”

MacNeill also confronted Inmate One with evidence of communications between Inmate One and Robinson in which Robinson stated, “What I really want is to get you out [early]. ․ You really are one of my key, absolute key witnesses. So it's really important to us to make sure that you are taken care of, and kept safe, and ․ to make sure that your needs are taken care of.” MacNeill also pointed out that Robinson had expressed a desire to communicate with Inmate One by phone rather than email so that MacNeill's defense attorneys would not learn of the communications between the two.

Inmate Two testified that he was MacNeill's cellmate for two years. Inmate Two “heard rumors” that “supposedly [MacNeill] murdered his wife” and asked MacNeill whether it was true. Inmate Two testified that MacNeill told him that “they couldn't prove it,” and that the medication she was taking was prescribed.

Inmate Three testified that he noticed an article about MacNeill in People magazine that claimed MacNeill murdered his wife. Inmate Three asked MacNeill if he had murdered his wife, to which MacNeill responded, “No, I didn't murder my wife. If I did, they don't have any evidence of it.”

Inmate Four testified that he had heard that MacNeill killed his wife. When Inmate Four asked MacNeill about it, MacNeill responded, “The bitch drowned.”

The State Inmate testified that he was housed in the same jail unit as MacNeill while MacNeill awaited the murder trial. The State Inmate asked MacNeill why he did not wear the same required jail-issued shoes as the other inmates, and MacNeill responded that he could “get away with a lot of things. For instance, ․ I'm getting away with my murder.” When asked if MacNeill elaborated on his statement, the State Inmate testified that MacNeill stated: “I'm getting away with murdering my wife.” The State Inmate testified that when he offered condolences for Michele's death, MacNeill said “Oh, no, I'm glad the bitch is dead.”

The jury convicted MacNeill of murder, a first degree felony, and obstruction of justice, a second degree felony.

MacNeill filed a post-trial Motion to Arrest Judgment or For a New Trial on the ground that the Utah County Attorney's Office failed to disclose exculpatory evidence in the form of consideration for Inmate One's testimony. MacNeill based the motion on emails and telephone call recordings from August through October. The various communications revealed that Inmate One planned on being released from prison in December 2013 in exchange for his testimony at MacNeill's trial. And sure enough, one week after trial, Robinson wrote letters to the U.S. Attorney's Office and Inmate One's federal defender highly recommending that “leniency be shown to [Inmate One] for his truthful and courageous testimony.” Inmate One was released from federal custody on December 13, 2013. The communications also revealed that, in violation of the court's exclusion order, Inmate One viewed portions of the trial testimony on the news before his scheduled date to testify.

The trial court found that, although the State failed to disclose evidence of the deal between Inmate One and Robinson, “a jury possessed of this additional information would not have rendered a different verdict.” The court came to this conclusion because cross-examination demonstrated (1) that Inmate One “was ready to procure and accept early release by whatever means it could be obtained,” and (2) that Inmate One believed “testifying for the prosecution in Utah [would be] the catalyst for his early release.” The trial court found that although the State suppressed exculpatory evidence related to Inmate One, the new information provided by MacNeill in his post-trial motion was cumulative and “would not have been reasonably likely to affect the outcome of the trial.” The trial court therefore denied MacNeill's motion.