



KILLERS AMONG US

ARE THERE MURDERERS IN OUR RANKS? IN TWO UNSOLVED UNDERWATER DEATHS THIS QUESTION REMAINS. MURDER IS ALLEGED IN BOTH CASES, AND CHARGED IN ONE, BUT YEARS LATER DOUBT STILL WEIGHS HEAVILY OVER THE DIVING DEATHS OF TWO WOMEN AND THE GUILT OR INNOCENCE OF THEIR HUSBANDS.

BY PETER MEYER

Imagine if you can, reaching a point of such marital disaffection or just plain mental or emotional dysfunction that you decide to murder your spouse. If you were such a person and a diver, would a scuba diving 'accident' make for the perfect crime? Would it be as simple as it might seem to just swim up behind your victim and pull off his or her mask and regulator and then hold them down until the end? It's a cheaper solution than divorce and you might even collect some life insurance. But ultimately, would you get away with it?

Even as fiction these musings are unsettling but, sadly, it appears there are those among us who concluded that killing a spouse underwater made some sort of sense. Currently, there are at least two officially documented cases of alleged scuba murder. We're left to ponder guilt or innocence of the suspects involved in these cases and whether they – and others, perhaps – will get away with the crimes they may have perpetrated. While we can't say for certain on the basis of these two cases alone – notwithstanding the media's penchant for provocative headlines as shown – they do provide food for thought.

Did Scuba Diving Honeymoon Turn To Murder?

Inquest: Police Reenact "Scuba Death Hug"

Wife's Scuba Diving Death "Homicidal Drowning"

Says Medical Examiner

Dive Shop Owner Got Away With Murder

In The British Virgin Islands Says Attorney

Verdict: Dive Shop Owner Murdered Wife

While Scuba Diving In British Virgin Islands

These headlines deal with the two cases in question, which have attracted international media attention. Before continuing it should be underscored that neither suspect in these cases has yet been convicted, or even tried, for murder. Investigations are ongoing and

regardless of outcomes, my comments are conjecture only. I have changed the names of those involved to protect the (potentially) innocent, and out of respect for the families who have lost their loved ones. I'd also like to avoid lawsuits but that said, both of these cases have been widely reported in the print and broadcast media in recent years.

ACCIDENT OR 'ACCIDENT'

So how does a seemingly typical dive accident become a murder investigation? Well, if the surviving diver was O.J. Simpson police scrutiny might be more intense but we're not dealing with celebrities here. Is murder underwater unusual? Professionally, I've reviewed more than 1,600 diving accident reports over the years, involving 100 plus fatalities, and it's never occurred to me that any were murders. Many involved circumstances where the deceased diver actually contributed to his or her own death by various means – using faulty or old equipment, pushing depth and time limits, diving alone, diving in difficult environments, exploring beyond their ability, entering caves or wrecks without proper back-up equipment etc. – or simply by being careless or stupid. Such is normal human behaviour.

There are also cases where the negligence of others – dive operators, instructors, buddies, etc. – has contributed to another's death. Typically this results in legal action of some type and, regrettably, I've a great deal of experience with these, as well as suicides. The latter involve individuals with mental issues and those suffering terminal illness. Some leave notes to clarify intent, helpful to the investigators and loved ones, too, perhaps. However, none of these cases have led us to suspect murder.

Wikipedia says, "Murder is the unlawful killing of a human person with malice aforethought. Murder is generally distinguished from other forms of homicide by the elements of malice aforethought

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Here's how The Sun newspaper presented one of the (alleged) murder stories to its online readers. The photo showing the stricken diver on the bottom was taken by another tourist diver on the trip who did not realize what the image captured until the film was developed some time later. The Sun says "bride Tina Watson appears in (this) chilling photo of her underwater death and the finger of suspicion has been pointed at the former model's husband (Gabe) of just 11 days. Both cases discussed in this story have received wide coverage in the print and broadcast media.

and the lack of lawful justification. All jurisdictions, ancient and modern, consider it a most serious crime. Most jurisdictions impose a severe penalty for its commission."

On initial review malice aforethought appears to be a necessary component, as well as a complicated legal concept with multiple variations. Basically, it means you thought about or planned the deed in advance. Even the worst dive negligence cases we have examined in the past, such as leaving divers behind in the water to be eaten by sharks, for example, have not been accompanied by obvious malice aforethought. This negligence may have been stupid, and preventable, but it wasn't planned, which then categorizes it as negligence, not murder. Interesting to note, however, that gross negligence leading to death can also be considered homicide at law and could result in prison time for those responsible.

Of homicide, Wikipedia says, (Latin, *homicidium*, homo human being + *caedere* to cut, kill) it's the act of killing another human being. It appears there is no apparent requirement for malice aforethought when you commit homicide so gross negligence that results in a fatality could be classified as criminal negligence leading to homicide, and, again, may qualify the unwary dive operator for criminal charges and possibly a prison term.

Basically, gross negligence is when you 'know', or should have known, that the dive activity should be cancelled, that is, the conditions are poor, beyond the capabilities of the participant divers, equipment is inadequate etc., but you push on anyway. Thankfully, not much of that actually happens in the recreational dive industry. So, now that we have (sort of) defined the differences

between negligence, gross negligence, criminal negligence, murder and homicide, let's take a look at the nuances of murder itself. Again, Wikipedia informs us that murder comes in three flavours. In summary, planned or first degree murder is committed with intent to take life by a sane person who's planned the act. Intentional or second degree murder is also committed with intent but without advance planning. Murder as a result of neglect or manslaughter is where someone has been killed as a result of the offender's neglect; for example, a car driver may be convicted of murder if his or her careless driving results in a person's death.

DEATH ON THE YONGALA

This involves Mr. and Mrs. Jones on their honeymoon in Australia. According to all reports he's a healthy, fit male and a certified Rescue Diver. She's 26, healthy, fit and although a certified diver, documents also describe her as inexperienced. Seemingly, they're a typical young American couple on an idyllic honeymoon. So, what compelled the authorities to look at this diving accident in a different light?

Witness reports say Mr. Jones raised the alarm when he surfaced, claiming his wife "had got into difficulty in strong currents and panicked". They'd been diving on the wreck of the *Yongala* off Townsville, Queensland, where tides and currents can make a dive difficult, even dangerous, if not timed correctly. His wife's body was recovered subsequently by one of the charter boat instructors. Police investigators later presented what they considered "contradictory" evidence regarding Mr. Jones's behaviour during

the dive; in particular his lack of effort to assist his wife. He had explained that "she got into difficulty during strong currents and panicked, knocking his face mask off and the regulator out of his mouth and he was unable to bring her to the surface."

A QUESTION OF TRAINING

Police contend that as a Rescue Diver he should have been able to save her anyway. A November 29, 2007, news report said, "Mr. Jones's failure to save his new bride's life, despite his considerable rescue diving training, was at the heart of yesterday's coronial inquest into the death of Mrs. Jones." Evidently, the police think a Rescue Diver possesses some extraordinary diving ability? I recently reviewed Rescue Diver standards for a particular training agency and found the prerequisites to be basic: open water certification, 16 or older and 12 hours logged underwater. To complete the program entails some theory and two training dives, each of about 20 to 30 minutes duration. Frankly, I wouldn't consider myself experienced as a basic diver at that point; much less an effective rescue diver – and I sincerely hope others agree. Sure, the additional experience would better prepare me for a rescue but simply passing a course is a far cry from being an experienced rescue diver, which case investigators and the expert witnesses giving evidence appear to have assumed.

There were no witnesses to the fatal events Mr. Jones described so it's possible that he never did lose his mask or regulator. If his story is true, however, there's no doubt in my mind his rescue attempts would have been seriously hindered and it's difficult to understand the police expectation of rescue by anyone deprived of their air supply and the ability to see underwater.

Viewed objectively, any diver at depth, with mask and regulator abruptly removed can be in serious trouble and themselves a candidate for rescue, quite possibly. And let's not forget the close proximity of a panicked diver. Whether right or wrong about the murder, it appears in this case the police have failed to comprehend the real world of sport diving and its training standards. We think we're (much) better trained than we really are, and they (the authorities and other non-diving constituents) believe us. This means they expect we'll live up to our own advertising and that would account for the official train of thought that if Mr. Jones failed to exercise the skills he possessed then he must have willfully and maliciously killed his wife. That he was unable to effect a rescue appears to have been discounted in their theory. I am hard pressed to believe that the authorities interpreting evidence in this case really understand the relatively low expectations we have of the divers we train. Maybe the best test in this scenario is for each reader to ask: Could I rescue someone in these circumstances?

The police also called into question Mr. Jones's "pedestrian" rate of ascent, for someone in a "hurry". Apparently he took two minutes to surface from about 80 feet (24m), whereas the instructor took just "a minute-and-a-half to travel twice the distance carrying Mrs. Jones's body." This information is based on witness accounts and, I'd expect, computer downloads from the two divers. Again, this strikes me as speculative and based on very questionable math. Rates of ascent and diver reaction times will vary from one person to the next in normal circumstances and can be dramatically altered by factors that include currents, visibility, dealing with mask and regulator issues, and how these may stimulate adrenaline in the body.

THE 'BEAR HUG' CONTROVERSY

In addition to these questions there is also a "controversial witness statement" describing a "bear hug" that Mr. Jones gave Mrs. Jones at some point in the dive. One investigative theory suggests the "hug was to hold the diver close to prevent (her) getting to her air, and then that person (Mr. Jones) saw other divers start descending, so he has turned the air back on to cover up what he has done, and headed for the surface." Sounds bad, but then how many of us have seen a diver attempting to rescue another in distress? What exactly does it look like? Could it look like a bear hug? During a two-week inquiry this bear hug was re-enacted in court by police divers. The videotape of an underwater re-enactment was also screened at the hearing.

If I wanted to turn off someone's air I'd do it from behind so they couldn't grab me and also because it's very unlikely a novice diver would be able to turn it back on again, particularly if I was holding on to them from the back. So, to me it's illogical for these investigators to conclude that a "bear hug" from the front was the murderous act of an "experienced" diver.

And what has all this conjecture proved? Four years after the event took place no formal charge has been laid against Mr. Jones, although he is repeatedly referred to as a suspect in his wife's death. Is he a murderer or the victim of an overly enthusiastic, and uninformed (with respect to diving) legal system? Is he a victim of dive industry hype? Have we intentionally, or inadvertently, misrepresented his ability as a Rescue Diver to the point where he has become a murder suspect rather than another poorly trained diver? Is our industry providing the quality training it advertises or are we issuing, too hastily, multiple certification cards to candidates whose abilities fall short of the qualifications they claim?

Hopefully, authorities will get to the bottom of this interesting case as the inquest reconvenes.

EVIDENCE SUGGESTS FOUL PLAY

Our second case also involves a couple, Mr. and Mrs. Smith, who had been married for five and a half years prior to the 1999 holiday fatality in the British Virgin Islands. They were aboard a chartered sailboat with another couple, off Cooper Island, where they planned to dive a couple of tugboat wrecks. According to their shipmates the Smiths were both advanced divers (Mrs. Smith had logged close to 400 dives) and entered the water only to separate almost immediately. This was not unusual according to the attorney representing Mrs. Smith's parents in subsequent civil litigation against Mr. Smith. Apparently, he enjoyed photography while Mrs. Smith went off to "count fish" and study the nearby reef. Mr. Smith returned alone to the boat some 35 minutes later and one of the other divers entered the water (also alone) to make his dive. Evidently, all aboard were comfortable with solo diving. Soon, the second diver came across "the first sign of trouble," a swim fin stuck in the sand toe-first. Expecting to be thanked for his diligence he picked up the fin and continued looking for Mrs. Smith only to find her motionless body lying back to the seabed and with mask and regulator removed.

Tortola police conducted a full investigation and ruled the death an accident.

O.J. IN REVERSE

Almost seven years later Mrs. Smith's parents appeared in a courtroom in Providence, Rhode Island, accusing their dead daughter's husband of killing her but Mr. Smith was not in attendance. Witness after witness went unchallenged by any defense counsel, to make a case that Mr. Smith had killed his wife for monetary gain. As one online newswire said, even "to the most casual viewer of TV's *Law & Order*, the proceedings

would have appeared skewed." The plaintiff's lawyer conceded Mr. Smith's absence had lent a strange twist to the case. You see, Mr. Smith hadn't been charged with anything and was not legally obliged to appear. When asked why he was not participating, Mr. Smith replied that he was "not defending himself because the trial was about money and nothing else." He added, "If there truly was a case, we would be in criminal court. There is no case."

It was a reverse O.J. Simpson scenario; after being acquitted of his wife's murder in a criminal trial the football star was sued by her parents in civil court (with its lower standard for 'reasonable doubt' than the criminal court), and found guilty. Simpson was required to pay a monetary award to the parents but having been previously acquitted of criminal conduct he remained a free man. In the Smith case, there were no charges, arrest or criminal trial, just a civil case that did award several million dollars to the parents; a sum Mr. Smith is unable pay.

As a result of the civil case and award, the Tortola police have reopened the case and, apparently, laid formal murder charges against Mr. Smith. I guess he should have showed up at the civil trial! Currently, he's awaiting extradition to the BVI's and maintaining he's innocent.

BUILDING THE CASE

So what evidence prompted the jury in this case to convict Mr. Smith? Firstly, Mrs. Smith's parents were convinced their daughter's husband killed her and they were willing to pay experts to help them prove their allegation. They contracted a very experienced Florida-based forensic dive investigator whom I know well, and a pre-eminent diving physician, with whom I have also worked, in California. The plaintiffs developed the following scenario:

Mr. Smith had been pursuing another romance and had killed Mrs. Smith to retain her financial support; divorce was not an option according to terms of a prenuptial agreement. Mr. Smith (and his 'break even' dive shop - what else is new!) was apparently dependent upon his wife's income. A local dive 'expert' swam over the site a day after the death "looking for problems that might explain the diving death" and apparently found nothing out of the ordinary. That expert was the first to suggest to the Tortola police that Mrs. Smith had drowned "after being attacked from behind." I have to ask myself what "out of the ordinary" problems would he be looking for at the dive

site? We are talking about a bunch of water, fish, sand and rocks here, aren't we? A mechanical engineer, who has worked for decades in the dive industry, presented video footage showing that the fin found jammed into the sand would not have settled that way under normal circumstances. I know this person and am working with him on another case at present. He's extremely competent and I would trust his judgment implicitly. There's no doubt in my mind that this fin did not simply settle on the bottom. What that tells us I am not exactly sure? He also said the strap of Mrs. Smith's mask could have pulled free if it had been yanked from behind. But the judge would not allow him to speculate on how he believed the fin or mask actually came off. Another local dive operator testified via videotape that he'd heard the radio mayday call and had approached the chartered sailboat to offer help that was rebuffed by a male who advised it was too late. There were no details regarding time lapse between the incident, the call, and the offer of help, but this evidence looks bad for Mr. Smith. A doctor, testified the condition of Mrs. Smith's recovered scuba equipment was suspicious. Other experts agreed the gear's condition suggested the application of some "external force."

Other testimony suggested that Mr. Smith was seen in a jovial mood, carrying drinks in each hand, the day after the incident. Maybe he was simply drinking away the stress? Mr. Smith had apparently amassed \$570,000 in cash on Florida's Miami-Dade County called the death a "homicidal drowning" but could not offer any comment on the identity of the party or parties involved in the homicide. The dive investigator concluded that Mrs. Smith's husband had attacked her in 80 feet (24m) of water.

Sounds damning but all this testimony is 'circumstantial' evidence and would not carry the same weight in a criminal proceeding. As 'evidence' much of it might not be admissible at all. Remember, this was a civil trial and at least for the present Mr. Smith remains innocent of criminal conduct. It will take his extradition to the BVI's, a trial, and a conviction or acquittal to officially conclude the matter. That means we can continue to scrutinize and speculate on this apparent murder. Let's face it, if we didn't know anything about the Smith's relationship - his apparent infidelity and financial woes etc. - we might be tempted to come to a very different conclusion than that of the civil proceeding.

IS IT MURDER?

If this incident report came across my desk I doubt I'd have suspected anything more than a simple diving accident. On the face of it two experienced divers headed off in different directions (with little concern for each other's safety) and one of them ran