

Blood Town S1-E7

Threshold for Adventure

Penny 0:09

I'm Penny Dearmin, and this is Blood Town.

Jim 0:15

Penny, since the last episode, the indictment has come down on Marcus Lillard, and I have lots of questions that I hope you can answer.

Penny 0:25

Before we get to our questions, let's just refresh the audience's memory about what's happened as far as the charges are concerned. May 12th, on Mother's Day, Marianne was discovered at Clarke Heindel's residence. And then on Monday, May 13, Marcus Lillard, Marianne's boyfriend, was arrested for murder, aggravated assault, and concealing the death of another.

Jim 0:51

Yes.

Penny 0:52

And then on Monday, January 14, the indictment came. The District Attorney decided to present his case to a grand jury, and they came back with four counts.

Jim 1:07

Yeah, like an extra one.

Penny 1:08

Yeah, well, there's an extra one, and then one of the other ones has changed. The first one's felony murder, the new one is involuntary manslaughter, and then reckless conduct, I guess in a way it's been exchanged for aggravated assault, and then the concealing the death of another remains the same.

Jim 1:29

Like, the reckless conduct seems to be a more all-encompassing in that even if the assault may not stick, perhaps there was reckless conduct in many ways that night that may or may not have pertained to an assault.

Penny 1:48

Right.

And, Jim and I are definitely not lawyers.

Jim 1:51

Should've been.

Penny 1:52

We should've been. That would've been a better career choice, economically anyways.

Jim 1:56

We've asked for an attorney from Georgia, you know, who's familiar with small towns and the complexities of the legal system, particularly Georgia law to explain some of these questions?

Penny 2:11

Well, thanks for talking to us today. You want to introduce yourself and tell the audience who you are?

Blake 2:16

Sure. My name is Blake Brantley. I'm an attorney down here in Albany, Georgia, and I've been studying up a little bit on this case, and I'm happy to be here.

Penny 2:26

So, one of the things that has come to light is that the indictment just took place, and the charges are different from the original arrest. So, can you talk to us about is that a common occurrence? Do charges generally change between that first arrest and then actual indictment? And tell us about that?

Blake 2:13

Yes, that's actually a very common occurrence, Penny. What happens is usually the district attorney has been provided more details by law enforcement, more facts have come out. And he has had a chance to think about, you know how he wishes to proceed with case. A lot of it is strategy as well. And so, by the time the district attorney presents the case to the grand jury, he's decided what their best avenue of obtaining a conviction will be in this situation. Clearly, the district attorney here, chose felony murder, involuntary manslaughter, reckless conduct and concealing the death of another. He felt those charges best fit the facts that he had. And so that that is why the change occurred.

Penny 2:52

When it does go to trial, and the jury is considering the charges of felony murder and involuntary manslaughter, will, they end up convicting him or proving him innocent of those charges separately, or could he be found guilty of both manslaughter and murder?

Blake 3:53

Well, it's not supposed to work that way. And so, the reason the district attorney has felony murder as one that's the more serious one here, he obviously really felt that he could not go after a regular murder per se that felony murder was going to be the best option here to get some sort of murder charge in involuntary manslaughter can certainly be viewed upon as his fall back to charge. Of course, involuntary manslaughter is a misdemeanor. This approach is I mentioned before, is quite common.

There's lots of other factors that go into when a district attorney makes this decision to represent the case of the grand jury. There's sometimes pressure from the victims' families and loved ones. Also, there's some political pressure, things of that nature. So,

Unfortunately, as a prosecutor and I myself have prosecuted several cases before, not, nothing serious as this. Sometimes you get pressure from outside sources, and I'm not saying that's what happened here, but there's just, there's a lot of things go into why a district attorney chooses the charges that he does. But in this situation, I would think that, you know, the jury is going to have to go with either felony murder or involuntary manslaughter, you know, that they would not find them guilty. Even if they did find them guilty on both, you know, the judge would, would have to remedy that because it's one or the other.

Penny 5:26

Okay. One other question that came up is that in this felony murder charge, it was while the accused was committing aggravated assault, and that was one of the previous charges in that he's under arrest was aggravated assault, and that is not one of those charges that he's been indicted for. So, does he have to be charged with aggravated assault for this felony murder to be for him to be found guilty of that?

Blake 5:56

Well, no, the district attorney in this situation, he's sort of painting of himself in a corner a little bit here, in my opinion, because he does not have, he chose not to indict the defendant separately on that. But he still has to prove aggravated assault occurred. I mean, that's the whole premise behind felony murder. So, he still, even though that's not an individual count on this indictment, he's, the district attorney, still gonna have to prepare his aggravated assault case, he's gonna have to prove the elements of aggravated assault. And, you know, and in my opinion, that's probably going to be a little bit a little bit easier said than done here in this situation.

Jim 6:38

Hey, in order to prove the aggravated assault, would you have to prove that there was a sexual nature to the encounter?

Blake 6:44

Yes, definitely. That there would have to be aggravated assault. The whole idea behind that here in Georgia, we have a simple assault and then we have aggravated assault. Simple assault is what you think of, you know, fraternity boys getting in a bar fight. Aggravated assault is when an, either a deadly weapon is used, or when somebody attacks another person with the intent to murder, rape, or rob. In this situation, although I don't think the district attorney is on record anywhere saying this, he clearly is going to use the rape aspect of that statute. That would be what I anticipate.

Jim 7:17

One thing that came up, came to light with the indictment is there was an unknown object which might have been used to perhaps strangle Dr. Marianne Shockley.

Blake 7:27

Yes, if details of some sort of device or some sort of object, some, you know, something that could go around her neck was used. He, the district attorney, might be able to say that a deadly weapon was used. But that's probably something we're not going to find out about until later on down the road when they actually provide more details, or when they sort of show their cards to the defense attorneys. We won't find out about that for a while. And that's quite common, too, as well.

Jim 8:00

I was wondering is felony murder a relatively new concept?

Blake 8:04

I don't recall exactly when felony murder first originated. I probably learned that in my first year in law school, and it probably has since long gone left me. But felony murder is something that came about. And what was happening was, you know, murder is very hard to prove. You have to prove intent. And every state kind of treats it a little bit differently. So, we had situations like where a bank robbery

would take place. Clearly, the bank robbers are just like it sounds, they're there to rob the bank. But when something bad happens, a witness gets shot and killed, a security guard gets shot and killed. There were situations like that where these perpetrators were not being punished accordingly, and so the legislature responded with felony murder. And sometimes it functions like it should sometimes in my opinion, it's probably you know, inappropriately used or it results in really an unjust result.

Jim 8:58

So, I'd always understood that like first degree murder had to be premeditated and second degree was kind of subsequent or after the fact. Is felony murder kind of like somewhere in the middle.

Blake 9:13

You know fairly well you're sort of on the right track there, you know. Murder here in Georgia, we just, our statute it just says murder 16 dash five dash one under the official code. The OCGA says that a person commits the offense of murder when he unlawfully with malice or forethought, either express or implied, causes the death of another human being. So, we can see there that the legislature put a lot of thought; they narrowed it down either express or implied malice of forethought. That's the key there. But, and, you mentioned second degree murder. That is also in the same statute as a person commits the offense of murder in the second degree, when in the commission of cruelty, which usually when in the commission of a felony, he or she causes the death of another human being irrespective of malice. So, we had that there. That's probably where the origins of felony murder kind of probably started there. And then in order to make it even more clear, they came out with the separate statute for felony murder.

Jim 10:14

Hey. Would felony murder, in this situation, be easier to prove than second degree?

Blake 10:18

Felony murder is easier to prove of all the murders, in my opinion, all you have to do show felony...and somebody was, I mean, it's not as simple as it sounds. But technically, there's a felony and as a result of that felony, somebody is now dead. But I think that there, I think the prosecution is probably going to have a difficult case, in my opinion, because some of the facts that you guys have already pointed out some other episodes is he's either got to have that deadly weapon or is going to have to he's got some other information, perhaps that the encounter or the sexual encounter was not consensual.

Penny 10:53

If there is evidence on the body that was discovered that shows that she was strangled with an object, and not manual strangulation, as was, you know, part of the preliminary results, and they do not have that object, is it still possible for them to convict on that aggravated assault and felony murder?

Blake 11:14

It could be possible. I mean, we see people sometimes convicted of murder, and we don't even have a body, so anything's possible. That's one thing I've learned in practicing law here. But it's going to present a lot of problems for the district attorney if you didn't have that object, or if you didn't have something else, you know, to...at least some sort of good story to present to the jury, you know, juries won't...they want to see evidence. Now, sometimes we call it the CSI effect. You know, they want to see the smoking gun. And if you can't provide that, sometimes it makes the jury's decision a little more easier. And they're, they're more willing to let someone go.

Penny 11:50

And so on to the involuntary manslaughter charge. They say that that took place while in the commission of reckless conduct. So that, from a lay person's perspective, sounds a lot easier to prove. And that's under count two.

Blake 12:07

Yes, that is definitely a lot easier to prove. Let's start with reckless conduct. So reckless conduct is defined as a person who causes bodily harm to or endangers the bodily safety of another person, by consciously disregarding a substantial and unjustifiable risk that is act or omission will cause harm or endanger the safety of the other person, and that this disregard constitutes a gross deviation from the standard of care, which a reasonable person would exercise. So, there's a lot going on in that statute. It's easier to prove than felony murder, but not altogether that easy as well, because you're talking about a standard of care with a reasonable person. You know, that's, that's kind of subjective, you know, well, it's not supposed to be there's a lot of case law out there on it. But somebody who's 20 years old, I'm sure it's gonna have a different standard of care than somebody who's 40 versus somebody who's 60. I mean, we all have different opinions, especially as we age. So that's not that's not going to be a walk in the park either for the prosecution, but certainly an easier burden to overcome.

Penny 13:05

Okay, so that was one of our questions: was that part of the statute that that phrasing of that Gross Misconduct, it sounded like a, you know, a moral judgment versus a legal grounding.

Blake

It really is. Because I mean, I'm sure there's going to be some people that wind up on that jury that that may think that some of these facts regarding sexual, an sexual encounter, they may find a little disconcerting, whereas it's some younger folks that from different generations, may think that they're, you know, a person is free to make their own decisions, and they shouldn't be judged for how they conduct themselves.

Jim 13:41

So it will come down to moral decisions. To me, Blake, it seems like involuntary manslaughter and reckless conduct will have to go hand in hand, because this is kind of where the sexual element comes in. There were no sexual acts going on at all. And then if Marianne Shockley and Marcus Lillard were having this asphyxiation-type sex where he was choking her, which is not what the reasonable all those words that came about earlier, if that wasn't going on at all, then it seems like the charges of involuntary manslaughter and reckless conduct could be irrelevant.

Blake 14:19

It could be, well, you know, it really is, it's gonna be interesting to see when and if we're ever provided details of the rape kit or the SANE kit. If there was no sexual encounter at all, that's going to complicate things. I would think it would, especially depending on whose DNA is found, you know, in that kit, you know, that's going to be a big question as well. But, the DA will have to have reckless conduct in order to get to involuntary manslaughter. So, in other words, he's first, he's got to start at the bottom of the totem pole here. You know, the one charge we're going to talk about concealing, concealing the death that's going to be the easiest one to get here. Reckless conduct will be the next easiest, but still going to be difficult because you know, he's there got spent a lot of time talking about these sexual preferences. A lot of people are uncomfortable talking about that; there's gonna be a lot of witnesses,

they're gonna be brought in there, you know, the jurors are really gonna be, this is gonna be a tough one probably to be involved in no matter if you're on the defense, prosecution, or on the jury.

Jim 15:25

Maybe we get this element of almost the unspeakable in some of these cases. Say, my mom, were looking at this. She, I don't feel like she would want to know that much about it, she would be like, oh, that just must have been a very horrible thing that happened, and not really want to go into the details of it. But I guess what I keep going on and on and on about you remember the good old red herring argument? The logical fallacy that once you put a big giant red herring in the room, such as here, the sexual encounter can be very much a red herring if that's what's going on. That's almost impossible to get around. It's hard to ignore. It's hard to talk about. Those salacious details that may or may not have even been, kind of take over.

Blake 16:16

Well, of course, you know, I'm sure there's, you know, we've been talking about the sexual encounter, but the use of drugs and or alcohol, you know, the toxicology reports as other individuals that were on scene are certainly going to come into play as well. Maybe, you know, having a sexual encounter in which you were choking your partner, maybe that's not reckless. But in a hot tub that's extremely hot while you're doing a couple different drugs, a hallucinogen and drinking alcohol, maybe that is reckless, you know, and so, there's just gonna, there's a lot of facts here that are going to have to be delved into; it's going to be difficult to try and come up with all those probably.

Penny 16:52

I'm really glad you brought up the drugs, because the toxicology report should be able to tell us who was under the influence of what. Since the drugs reportedly taken that night, they're all fast acting, and they clear the blood really quickly, except for the marijuana.

Blake 17:10

Well, yeah. And then, of course, also having a sexual encounter in your bedroom, when there's choking going on is probably safer than having it in a hot tub, you know, so you know, is it safe to be choking somebody while you're having sex with them in a hot tub? There's a good argument, maybe not, maybe, maybe that's a bad idea. But then still, that's coming down to your moral compass, or how much, what your threshold is for adventure, you know; there's still some, I would think that there's some wiggle room there that the defense is going to be able to use and really play that up.

Penny 17:40

So, what we have at the scene now is we have a man who committed suicide, and cannot provide his account of what took place, but he does have, he did leave behind a suicide note. And the sheriff has stated that suicide is not a sign of an admission of guilt, and that they do not believe that he had anything to do with anything that happened there. How do you see the different lawyers tackling that argument? As far as Mr. Heindel's involvement, or lack thereof?

Blake 18:18

They're gonna pounce on that big time; the defense lawyers are. Of course, the sheriff said what he said. I mean, he has to say that, you know, he has to portray that whether or not he believes that or not. But I think that there are a lot of people that would certainly interpret that he killed himself as that he either did it, he either partook in the whatever resulted in her death, Ms. Shockley's death, or he didn't want to be around to see, to even chance that he got accused of it. So, I think you're going to

see them seize upon that. I think you're going to see them hammer that, and even if the DNA evidence doesn't necessarily match up with that. I mean, I would certainly know, that's what I would do as a defense lawyer, because you're just trying to create a reasonable doubt here. And you have somebody who killed himself on the scene within minutes of the law enforcement arriving. I would really, really think that's going to weigh heavily, at least on a few people's mind on the jury, you know, all you need is one person to hang it up.

Penny 19:14

The concealing the death charge, count four, seems almost impossible to avoid.

Blake 19:19

Yeah, I mean, I wouldn't, I wouldn't be shocked at the defense lawyer, if they wind up going to trial, I wouldn't be shocked that they concede that just so you don't spend time arguing about it. Because I just don't see a way around that for him. And we haven't talked yet about the probation. You know, the standard that you look at for probation revocation is much easier than a criminal offense. Criminal offense is beyond a reasonable doubt. What probation violation is just preponderance of the evidence. And the way that you can sort of explain that to the layperson is 51%; we just need to 51%. Did something happen or not? Mr. Lillard is already, he's already been tested and he came back positive for marijuana and cocaine, I believe is what the report said. So, there's not gonna be any way around that; he will be revoked. I'm surprised he hasn't been revoked already. But at the same time, the indictment just came down, so the district attorney will probably let that settle in a little bit. I'm sure he's already been in contact with the, with the defense lawyer. But if he, I think 15 years is what his sentence was for his first offense, his prior charge that he's on probation for, so he's looking at very serious time. And it won't be too long before they're going to have a probation revocation hearing. And, and that's going to be a really, really tall order for the defense to get around. So once you see him convicted of that probation violation, I think more than likely, we'll see some sort of plea deal offered, because he's gonna be in jail for a number of years. And then if the felony murder goes away, we're just talking about three misdemeanors, so I think we'll see a plea deal to something more than likely, I would think.

Jim 20:56

How many years do you think Lillard might get?

Blake 20:59

If he's revoked for his probation for the violation of his, his term, obviously, the judge is gonna know about the other charges. But you're not supposed to give them the max just because of these other charges. It's within the judge's discretion. We saw that another case, a very famous case, I won't mention it by name, but there was a podcast for it. But one of the players, one of the defendants in that case was given I think, 25 years for some charges that normally just don't warrant that. And I think a lot of people in the defense community thought that was really some overreaching by the court in that situation. OJ Simpson is another great example. He got nine years I think. I'm not, I'm certainly not condoning or trying to excuse what he did, but most people in that situation would not have gotten nine years, but because it was OJ Simpson, and his history, got hammered on that. So, we could very well see that here. So, if he originally had 15 years, and he's only served a year or two of it, I mean, I think we'll see him get around eight to 12 years for that.

Jim 21:59

Is there a possibility that Marcus could get the death penalty?

Blake 22:04

Possible in this situation? Probably not. I mean, it's always possible when somebody is convicted of murder, but probably not, especially felony murder here. So.

Jim 22:10

How about life in prison?

Blake 22:13

Yes, that is definitely a possibility. But again, probably not. I think that you mentioned red herring earlier. It's impossible to know for sure exactly what the district attorney was doing here, but the felony murder could just be a red herring. I think it's entirely possible to see this, see the juries like well, you know, there's just not enough here for murder, but we're gonna get him for everything else. Sometimes that's referred to as a shotgun approach to just throw everything out there, see what sticks. It works like a charm in some cases for prosecutors. Sometimes it backfires because if the jury gets in here and says, "Felony murder, that's ridiculous." They might start nitpicking on the other charges, you know, that they will start getting into that moral compass as well, you know, well, maybe it's not really reckless, just because they have unorthodox sex. You know, it shouldn't be reckless, and then it just falls apart on him. It snowballs. It could snowball big time backfire, but it usually does not. But you know, it does happen.

Penny 23:07

Is there a minimum sentence, or is it completely at the discretion of the judge for these charges?

Blake 23:11

They, all these statutes have usually at the end of their, let's take involuntary manslaughter, for instance, subsection a of that says not less than one year, no more than 10 years. Concealing the death says, For not less than one, no more than 10 years. But these statutes have their minimums and they have their maximums in there. So, the judge has broad discretion as to how he wants to sentence.

Jim 23:35

Let me ask you this. Earlier, you brought up a former podcast about a murder in South Georgia. Would you say that concealing the death of another for 15/16 years is one thing versus say, up to two hours, that perhaps these guys were confused?

Blake 23:58

Yes. And we haven't talked about that. But yeah, you're exactly right. I mean, did they really conceal the death here? Or were they delaying the inevitable making that phone call? You know, that's a very good point you brought up there. I'm sure the defense attorneys are going to bring that up to that, hey, they're not concealing anything. They were just trying to save her life; when they realized they could not, that's when they finally, you know, made the other calls. So. And speaking of which, you know, depending on how under the influence Mr. Lillard was at the time is certainly going to play into it as well. And of course, all these other stories that he told us as well, you know, there's just so much to seize upon here as a defense lawyer, you know, it's, this is one of those that, you know, if you have to try cases, there's a lot to go after here. There's a lot of, I can see a lot of openings, a lot of holes that can be poked in the prosecution's case.

Jim 24:50

What are the main weaknesses that you would try to exploit in this case as a defense attorney?

Blake 24:56

Sure, there's a couple that come to mind. The first one obviously is going to be the homeowner who committed suicide. I can imagine a lot of people on the jury are gonna want to see why was this even allowed to happen. One of the key witnesses has killed himself due to, due to some mistakes made by law enforcement. Now, we can't ask him these questions. He killed himself for some reason, you know, even might have been embarrassed, but maybe he played a role in this. So, I mean, I'm I would really, really hammer that home. The next one's going to be the felony murder charge. You know, in order to have felony murder, you're gonna have to aggravated assault. This man has been in a relationship with her for about a year, I think, we think. Even the prosecution has admitted that they've talked to prior sexual partners of his, all these women are alive, they're okay. They, they survived a relationship, so to speak with him, so he clearly did not intend to kill them or harm them. That was just part of the sexual encounter. And so I think the defense attorney is gonna have a very easy argument that look, this was, this was maybe not a routine sexual encounter, but it was one that was not that uncommon for them to take part in. And it was very, very unfortunate result. And it resulted in her death, but it was certainly not intended, and it was certainly not an aggravated assault. It was consensual.

Jim 26:13

if you were the prosecutor in this case, what would you focus on?

Blake 26:18

Right, if I'm the prosecutor, there's a lot of seize upon as a prosecutor as well. I mean, you know, you play up the, the angle of being, you know, in the hot tub, using a lot of drugs, drinking that tea, you know, having a sexual encounter in which the asphyxiation...you know, there's a lot of moving parts there. You know, there's a lot that could go wrong. Baldwin County, is still considered a rural county, but it's become more Metropolitan here lately, especially with the explosion of the students and the school being so successful, but I think that there's still gonna be plenty of people that are gonna be on that jury that think that just the idea of choking someone during sex is probably reckless; you start throwing the other stuff in there, it's gonna be really reckless. So, you know, I could see that if you get two or three strong jurors on there, you know, them kind of taking over and kind of having their way and making everybody else agree with and then that was reckless.

Penny 27:12

We have talked about motive in this case. And can you just explain how motive comes into play when a case is being tried or defended?

Blake 27:21

Right. Yeah, motive is a huge part. We learned about that our first year in law school, you know, you got to have it in these situations. The jurors are going, I wanna know why? Why did this happen? And in this situation, there's, that's gonna be a tough one to come up with. You know, he's been in a relationship for a year, things appear to be going nicely, they'd been out for, in downtown Milledgeville, having a good time, they retired to Dr. Heindel's house and, you know, why? Why would out of the blue, you know, he snap and try and, you know, take it to the next level and harm her like that? So, the only people, two of the three people that were there are now deceased, and the only one that is alive is now a defendant. And so, and he's probably not going to testify. So, we're just left to speculate as to what could have happened and, and the district attorney will provide something. But we don't really

have to focus on that so much because of the felony murder here. If this was regular murder, we're going to be having to focus more on motive, but because it's felony murder, it's not really that relevant.

Penny 28:26
Okay. That's helpful.

Jim 28:29
That's a great point, since it's felony murder kind of takes motive out of the scenario.

Blake 28:36
That is exactly what it is for. And motive is not, it's not necessary anymore. It's just: was there a felony? Yes. Okay. Well, then did somebody die? Yes, they did. Did they die as a result of the felony? Yes, well it's felony murder.

Jim 28:49
Blake, if Dr. Clark Heindel were here to tell us what happened, or to help us out about what happened that night, obviously, that would be very helpful, but he's not. And I guess it's just the idealistic person in me, but it seems like him being left alone on that front porch and being able to commit suicide was perhaps one of the more reckless behaviors to even happen that night.

Blake 29:11
Well, yeah. And if I'm a defense lawyer, I'm gonna bring that up. You know, the idea is to create doubt, you know, you're trying to stir the pot, if you will. So, it's very unfortunate. It's very sad that that happened. Certainly, it's not following procedure. That's for sure. You know, I do wish that he was still here so we could find out. I mean, I think both the both sides wish that he was still here. Probably everybody involved. But, you know, unfortunately, he's not so we'll never be able to go down that road.

Penny 29:39
Anything we haven't asked that you think is important for our audience to understand?

You know, I was thinking about what would happen if this case did go to trial. I was thinking about some of the witnesses. I think this is going to be one of the more complicated aspects of it because as a prosecutor, you don't want to lose your audience, so to speak, but at the same time, you have to prove your case. I can't even begin to imagine all the witnesses, you know, all the law enforcement officers that were on the scene, former partners, lovers of really probably hers and his. Former patients, I'm not sure, of the doctor, because going back to, you know, why did he kill himself? Was he just embarrassed? Or did he do something that he was afraid of the repercussions of? So, you know, defense is gonna call as many as possible just to sow the seeds of doubt. So, I mean, I imagine the witness list will be very extensive. You know, if it gets to that point.

Penny
We're expecting a lengthy trial, then?

Blake 30:36
I think this will be a very lengthy trial, you know, well, you know, a couple of weeks, which is, you know, a couple of weeks to a month, maybe, but it would be this will be a fairly long one for South Georgia.

Penny 30:47

Are you surprised they haven't asked for a change of venue?

Blake 30:49

No, I'm not surprised. Well, I mean, you know, I am a little bit removed from the situation and I'm a couple hours away from Baldwin County. You know, some, I mean, that's, that was tried in the other case that we that we mentioned that has the other podcast going and it was denied there. So, if it's going to be denied in that case that received the national attention, you know, that's a pretty high threshold they'd have to overcome.

Penny 31:09

Let us know what questions you have about the case. You can email us at bloodtownpodcast@gmail.com or on Facebook and Instagram, @bloodtownpodcast and on Twitter @bloodtownpod.