

Military Prosecutor Asks Dismissal of Marine Murder Charges

by LUCILLE RENWICK, Times Staff Writer

military prosecutor Friday requested murder charges be dismissed against 30-year-old Marine Gunnery Sgt. Murray D. Payne, who is accused of murdering his wife and making her death look like a suicide.

Capt. Paul McBride, the prosecutor, said autopsy results were not conclusive enough to prove that Ella Mae Payne did commit suicide. However, the investigating officer, who functions as a judge in a military version of a preliminary hearing, decided against dropping the charges until the investigation is complete.

In the meantime, Payne's commanding officer ordered the Marine released Friday morning. Payne, 40, has been detained in a brig at Camp Pendleton since Dec. 1. The military hearing, which began last Tuesday at the El Toro Marine Corps Air Station, is held to determine if there is enough evidence to warrant a court-martial of Payne.

Payne and the couple's 22-year-old son, Darrell, discovered the body at 4 a.m. last Tuesday, hanging from the garage rafters of a Corona home.

"I guess we're over the hump now," said Kevin McDermott, Payne's attorney.

McDermott cited the testimony of Dr. Dewitt T. Hunter, the Riverside coroner who conducted the initial autopsy on Ella Payne and declared the death a suicide, as instrumental in the request that charges be

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the attorney for Sgt. Murray D. Payne

dismissed.

Hunter testified Friday that before the autopsy, he "would have placed homicide at the top of the list of the possible options," especially because of the complexity of the knot used in the hanging. However, the autopsy proved his initial belief incorrect, he said.

"I went to unusual efforts to assist in differentiating between these two forms of death," Hunter said.

The coroner said he was looking for evidence to prove foul play in the death, but found none.

Richard Allen Bogan, an investigator with the Riverside County coroner's office who was at Payne's home the night the

body was found, testified Friday that he had several suspicions regarding Ella Payne's death.

Bogan said he not only thought that it was unusual for the 39-year-old woman to wear jewelry with her nightgown, but he also questioned the knot in the rope.

"[I was] kind of stunned that someone would go through so much trouble to hang themselves," he said.

However, Bogan testified that forensically nothing he was aware of could be linked to homicide.

Two months ago, Bogan and Hunter amended the statements on reports in the Riverside coroner's office, listing the death as a suicide. Ella Payne's death certificate was also amended to list suicide as the cause of death.

During a break from Friday's hearing Payne said he is not sure where he will live permanently but was glad to be free.

"Now I can go out to lunch and have a nice dinner," he said.

"It's going to be nice to be outside of here."

Both the defense and prosecution are continuing their investigations in Payne's case and are uncertain when the hearing will end.



Sgt. Murray D. Payne and his wife, Ella Mae, and poodle in 1987 family photo

Murray Payne returned home from his latest overseas deployment to find that something was terribly wrong in his home. His house was in foreclosure, bill collectors were knocking down his door, his car had been repossessed, despite the fact that he had left his wife, Ella, a monthly pay allotment that more than covered all of the bills. He felt his wife and son, Darrell, had become estranged from him. He could get no explanation as to where all of the money had gone. Yet if he thought all of that was bad, it would grow far worse when he found Ella hanging from the rafters of their garage, dead from an apparent suicide. And as if Murray was cast as the modern day Job, his life would be further turned upside down when he was arrested for the murder of Ella six months after her death.

Murray, a seventeen year veteran of the Corps, was confined at the Camp Pendleton Brig and awaited his fate at the hands of the military investigation team comprised of the Naval Criminal Investigation Service and a Naval forensic pathologist who had gained national fame for his autopsies of the crewmen from the Challenger shuttle disaster. Their investigation concluded that, despite the appearance of an apparent suicide, Murray had killed his wife and staged the hanging to cover his deed. The matter was set for an Article 32, the military's equivalent to a preliminary hearing, and the Government was certain that the matter would routinely be bound over to a general court martial where the ultimate penalty, death, would be sought.

Murray retained the services of attorney Kevin Barry McDermott. Rather than allowing a routine Article 32 take place, McDermott decided to take the offensive at the hearing and attempt to prove that Ella had died by her own hand. While the defense rarely calls witnesses to testify at such a hearing, McDermott enlisted the services of an internationally renowned forensic pathologist who testified that the physical evidence from the crime scene conclusively proved to him that a suicide had taken place. Moreover, the Naval forensic pathologist admitted under a grueling cross-examination that he had openly stated a bias that he believed Murray had committed the crime even before he had conducted the autopsy. He had been caught on tape prior to the autopsy stating "I know he did it. Now all I have to do is prove it."

McDermott also attacked the Government's experts who were called to testify about the knot used to hang Ella. In the Government's opinion, this knot showed signs of someone who had received training in military knot tying, training that Murray had received at the Corps' Mountain Warfare School. However, McDermott got these experts to admit that the knot could be something far simpler and they would also admit that a knot would be tied differently depending upon whether someone was right or left handed. The Government experts agreed that the knot was tied by someone who was left handed.

McDermott called as his last witness Ella's supervisor from Pacific Bell. He testified that Ella's occupation called for her to repair telephone splices which required extensive knot tying. Moreover, he testified that he knew Ella was left handed.

Murray Payne was, by all accounts and conceded to by the Government, right handed.

At the conclusion of this testimony, the Government prosecutor dropped the charges and Murray was a free man.

Murray was able to complete his Marine Corps career and retired to North Carolina.

McDermott has his practice in Tustin, California. A veteran of over 200 court-martials, he provides free consultation to all active duty, reserve and dependant military personnel. He can be reached at his toll free number 800-723-6580 or at his e-mail address warlawyer@aol.com.