



## Can Brian Walshe be Charged with Murdering his Wife?

Brian Walshe appears to be in trouble. His wife was last seen on New Year's Day and the search for her continues. The case is quite bizarre. Their former home burst into flames days after she was reported missing. Authorities have uncovered blood in their home, a broken knife, a hacksaw, and bloody trash bags in a transfer station. Brian was arrested by police for misleading a police investigation and he now sits in jail on \$500,000 bail. Speculation about Brian's involvement abounds. Did Brian kill Ana? And without a body, can he be charged with her murder? Yes, he can. And depending on how things shake out, it's possible that he may even face the death penalty.

Back in April of 2021, Brian pled guilty to some federal charges that involved a fraudulent art deal. When he was arrested last week for allegedly lying to police, he was awaiting sentencing on the art fraud case. That now makes things a lot more complicated for his defense, which is how we get to the death penalty. But before I explain all of that, you must first understand a little about the way the law works.

There's federal law and then there's state law. Brian may face criminal liability for murder under both. Massachusetts doesn't have the death penalty, but the federal system does. Most murder cases are prosecuted under state law and in state court. Under some circumstances, however, murder is a federal crime, and the case is heard in a federal court and subject to federal sentencing. That's where the death penalty comes into play.

So how exactly could Brian be tried in a federal court for murder? Turns out that back in June, during his sentencing hearing and apparently "moments away from pronouncing sentence," the federal court suspended the hearing to allow the government to investigate whether Walshe had violated the terms of his pre-sentence release. The allegations made by the government were that while he was on pre-sentence release, Brian obstructed justice and committed separate crimes in connection with a probate case involving his deceased father. That's in fact still under investigation.

This is pure speculation, but if the motive for Ana's murder was to prevent her from testifying or from providing evidence of Brian's non-compliance with the terms of his pre-sentence release—that is, if she knew about any crimes he committed during the probate of his father's estate—then Brian may face murder charges under the federal witness tampering statute, which is punishable by death.

But so far, Ana hasn't been found. So, what does that mean for Brian? Criminal cases require evidence. In the case of murder, there must be evidence that a human being has died. To prove a case, the prosecution must have the *corpus delicti*—Latin for "body of the crime." There must be sufficient evidence to show that the alleged victim is indeed dead. That's no difficult task when the police have a dead body. But when they haven't, other types of evidence must be used to show that a death has occurred. A confession, for example, may help satisfy that burden, though the law requires that some additional evidence corroborates the confession.

As of right now, there's no direct evidence that Ana Walshe is dead. But there may be some circumstantial evidence that she is. If, for example, the discovered blood is positively identified as Ana's and the broken knife has traces of her blood on it, one can infer that it got there because she was cut by the knife. If the authorities can piece enough of this type of evidence together, they may be able to show, circumstantially, that Ana is dead and that the *corpus delicti* rule has been satisfied. The bottom line is that if investigators amass enough circumstantial evidence, Brian could be charged with murdering his wife, even if they cannot find the body.

## Client Acquitted of Second Offense Impaired Driving Charge

I don't pass judgment on my clients, but when I see second offense DUI come across my desk, it's hard not to think that they need more than just my help. But then I remind myself that sometimes, things aren't always as they seem. I've said this before, and I'll say it again: it's not ok to drive if you're impaired by alcohol or drugs. But as I've previously written, it doesn't take much to be charged with impaired driving—the smell of alcohol alone will likely do it. And that's exactly what happened to this client.

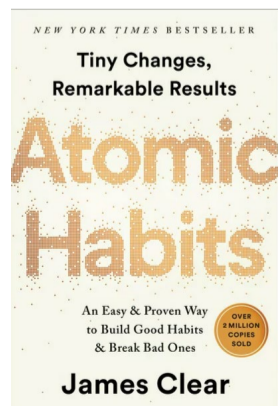
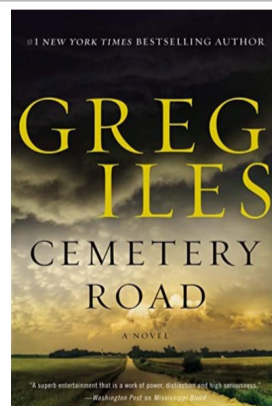
After returning to Cape Cod for his sixth season of summer work, he and a few friends went out to catch up and have some beers. Since he had a previous impaired driving charge a few years before, my client was careful to limit his intake. On his way home, he was involved in a single-car accident. At the scene, he refused field sobriety tests and refused to take the breath test back at the station. The police reports noted that his breath smelled like alcohol, that his eyes were red and bloodshot, and that his speech was slurred. At trial, that was easy to attack. My client had been drinking, but not a lot. On cross-examination, the police admitted they never asked him how much he had to drink, when he had his first drink, or when he had his last. They admitted that information is important in determining intoxication. The red, blood-shot eyes were explained away on cross-examination by the deployment of the airbag and the associated chemical propellants in the air. Of course those things are going to cause red, bloodshot eyes. Similarly, my client's slurred speech wasn't problematic, as I showed on cross, because the police admitted that my client was polite, cooperative and that they understood everything he said. He also spoke with an accent. I got them to admit that without a way to compare his speech pattern that night with its everyday appearance, he may have been speaking the way he normally does. In the end, though three police officers testified that they thought my client was impaired, my cross-examination showed that their conclusions were simply mistaken, and my client was acquitted.

## Book Recommendation

### Cemetery Road

By: Greg Iles

I'm a huge Greg Iles fan. A contemporary author from Mississippi, most of Iles' novels are legal thrillers. This one's a little different. I loved it because it blends archeology and murder into a page-turner.



### Atomic habits

By: James Clear

You are what you habitually do. In this newsletter, I've talked a lot about the bad habits I've kicked out and the good ones I've replaced them with. My daily meditation habit is the single greatest thing I have done for myself. All of us have things that we know we either need to stop doing, or start doing. Well, here's the first step. Read this book. By the way, it was 91,820 5-star reviews on Amazon. That's gotta tell you something...

## What I'm Listening To

### Ian Hawgood Radio

I use headphones and music to get into the space which will allow me to do deep brain work. Here's what I've been listening to.

