# 2007-2008 Competition Case

# The Wade Edwards High School Mock Trial Program

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# 2007-08 Wade Edwards High School Mock Trial Program

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| **State of Utopia**<br>**v.**<br>**Tracy Palmer** | **Criminal Action No. 2007-MT** |

***Note: All characters, names, events, places and circumstances in this mock trial case are fictitious.***

The NC Academy of Trial Lawyers gratefully thanks attorney Brett Dressler of Sellers, Hinshaw, Ayers, Dortch & Lyons, PA in Charlotte for his valued assistance in developing and writing this case. We also thank Michelle Robertson, Celeste Harris and Andy McVey for their leadership and support of the program.

**Introduction/Fact Summary:**

Utopia, a city with a population of about 40,000, is home to a number of well-regarded universities, like the prestigious University of Utopia (UU). Drew Barnes, Tracy Palmer and Max(ine) Swanson, all graduates of Utopia High School, were all among the few from their high school to be accepted at the University of Utopia. All three were popular, healthy, high-achieving high school students. Tracy Palmer, however, was diagnosed with somnambulism as a young child and continues to suffer from sleepwalking as a young adult.

All three students were close friends growing up – having known each other since kindergarten. High school and college life can change people and their relationships, however. Tracy's and Drew's relationship became especially strained as they competed over academics in high school and college. In early April 2007, Tracy learned that Drew was dating Tracy's ex girlfriend. This significantly intensified Tracy's dislike for Drew.

On the night of May 18, 2007, students had gotten together for an end-of-the-year party at Kill Devil Island. The island is in the middle of Lake Tarheel, which is located 15 miles from Utopia. Many of the students camped out at this popular hangout that night, playing games, telling ghost stories, and celebrating well into the night. Drew Barnes and Tracy Palmer both went to the island that night with separate groups of friends. Each came equipped with their own one-person tents, sturdy Maglite flashlights, and other high quality camping equipment.

That night, Drew Barnes was overheard having a heated argument on the island. Drew was found dead in his tent at 6 am during the morning of May 19. The police arrived on the scene at 6:45 am. They sealed off the island – no person was allowed to leave or enter during the early hours of the investigation. Drew's acquaintance, Alex Rome, was among the many students interviewed by the police that morning. Tracy Palmer, age 20, was questioned and fingerprinted by police. At the conclusion of his interview with police, Palmer was arrested for the murder of Drew Barnes.

# STIPULATIONS

1. The fact summary provides background information only. Witnesses may testify to information contained in the fact summary only if it is also found in their witness statement.

2. All exhibits included in the case materials are authentic and accurate in all respects and no objections to the authenticity of the exhibits will be honored. The chain of custody of the evidence may not be contested.

3. All exhibits, if offered, shall be admitted. Specifically, all issues regarding hearsay, relevance and the chain of custody of Exhibits 1-5 and A-F have been disposed of pre-trial and that the trial court overruled all such objections.

4. The signatures on the Witness Statements and other documents are authentic. If asked, a witness must acknowledge signing the document(s) and must attest to the contents of the document(s) and the date(s) indicated thereon. The statements are deemed to be given under oath or affirmation.

5. Tracy Palmer is a male. The witness, however, can be played by a female or male student.

6. The stipulations cannot be contradicted or challenged.

# WITNESSES

**Witnesses for the Prosecution:**
Alex Rome
Lee Jones
Max(ine) Swanson

**Witnesses for the Defense:**
Tracy Palmer (Defendant)
Dr. A.M. Bien
Bobby D. Ayers

**All characters, institutions, events and other facts contained herein are fictitious and are not intended to represent any individual, living or dead.**

# EXHIBITS

**Exhibits:**

| | |
|---|---|
| 1 | Autopsy Report, Coroners Office, County of Mock |
| 2 | DNA Report |
| 3 | Maglite Flashlight |
| 4 | State Bureau of Investigations Fingerprint analysis report |
| 5 | Forensic search snapshot: internet activity on confiscated computer |
| A-F | Website pages sited in computer forensic search snapshot |

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|---|---|
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**JURY PATTERN INSTRUCTIONS**
[***Not*** to be read in open court]

*In the event that the defendant is convicted of murder in the first degree, the court will conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment (without parole). If that time comes, you will receive separate sentencing instructions. However, at this time your only concern is to determine whether the defendant is guilty of the crime charged or any lesser included offenses about which you are instructed.*

The defendant has been charged with first degree murder.

Under the law and the evidence in this case, it is your duty to return one of the following verdicts:

(1) guilty of first degree murder, or

(2) guilty of second degree murder, or

(3) guilty of voluntary manslaughter, or

(4) guilty of involuntary manslaughter, or

(5) not guilty.

First degree murder is the unlawful killing of a human being with malice and with premeditation and deliberation.

Second degree murder is the unlawful killing of a human being with malice, but without premeditation and deliberation.

Voluntary manslaughter is the unlawful killing of a human being without malice and without premeditation and deliberation.

Involuntary manslaughter is the unintentional killing of a human being by an unlawful act not amounting to a felony or by an act done in a criminally negligent way.

For you to find the defendant guilty of **first degree murder**, the state must prove five things beyond a reasonable doubt:

First, that the defendant intentionally and with malice killed the victim with a deadly weapon.

**Malice** means not only hatred, ill will, or spite, as it is ordinarily understood -- to be sure, that is malice -- but it also means that condition of mind which prompts a person to take the life of another intentionally or to intentionally inflict serious bodily harm which proximately results in his death without just cause, excuse or justification. If the state proves beyond a reasonable doubt, that the defendant intentionally killed the victim with a deadly weapon or intentionally inflicted a wound upon the victim with a deadly weapon that proximately caused the victim's death, you may infer first, that the killing was unlawful, and second, that it was done with malice, but you are not compelled to do so. You may consider this along with all other facts and circumstances in determining whether the killing was unlawful and whether it was done with malice.

A firearm is a deadly weapon. A **deadly weapon** is a weapon which is likely to cause death or serious injury. In determining whether the instrument involved was a deadly weapon, you should consider its nature, the manner in which it was used, and the size and strength of the defendant as compared to the victim.

Second, the state must prove that the defendant's act was a **proximate cause** of the victim's death. A proximate cause is a real cause, a cause without which the victim's death would not have occurred.

Third, that the defendant **intended to kill** the victim. Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. An intent to kill may be inferred from the nature of the assault, the manner in which it was made, the conduct of the parties and other relevant circumstances.

Fourth, that the defendant acted with **premeditation**, that is, that he formed the intent to kill the victim over some period of time, however short, before he acted.

And Fifth, that the defendant acted with **deliberation**, which means that he acted while he was in a cool state of mind. This does not mean that there had to be a total absence of passion or emotion. If the intent to kill was formed with a fixed purpose, not under the influence of some suddenly aroused violent passion, it is immaterial that the defendant was in a state of passion or excited when the intent was carried into effect.

Neither premeditation nor deliberation are usually susceptible of direct proof. They may be proved by circumstances from which they may be inferred, such as the [lack of provocation by the victim] [conduct of the defendant before, during and after the killing] [threats and declarations of the defendant] [use of grossly excessive force] [infliction of lethal wounds after the victim is felled] [brutal or vicious circumstances of the killing] [manner in which or the means by which the killing was done] .

**Second Degree Murder** differs from first degree murder in that neither specific intent to kill, premeditation, nor deliberation are necessary elements. In order for you to find the defendant guilty of second degree murder, the State must prove beyond a reasonable doubt that the defendant unlawfully, intentionally and with malice wounded the victim with a deadly weapon, thereby proximately causing the victim's death.

**Voluntary Manslaughter** is the unlawful killing of a human being without malice and without premeditation and without deliberation. A killing is not committed with malice if the defendant acts in the heat of passion upon adequate provocation.

The heat of passion does not mean mere anger. It means that the defendant's state of mind was at the time so violent as to overcome reason, so much so that he could not think to the extent necessary to form a deliberate purpose and control his actions. Adequate provocation may consist of anything which has a natural tendency to produce such passion in a person of average mind and disposition, and the defendant's act took place so soon after the provocation that the passion of a person of average mind and disposition would not have cooled.

The burden is on the State to prove beyond a reasonable doubt that the defendant did not act in the heat of passion upon adequate provocation, but rather that he acted with malice. If the State fails to meet this burden, the defendant can be guilty of no more than voluntary manslaughter.

If you do not find the defendant guilty of murder or voluntary manslaughter, you must consider whether he is guilty of involuntary manslaughter. Involuntary manslaughter is the unintentional killing of a human being by an unlawful act not amounting to a felony, or by an act done in a criminally negligent way.

For you to find the defendant guilty of involuntary manslaughter, the State must prove two things beyond a reasonable doubt:

First, that the defendant acted unlawfully (or) in a criminally negligent way. The defendant's act was unlawful if defendant killed the victim. Criminal negligence is more than mere carelessness. The defendant's act was criminally negligent, if, judging by reasonable foresight, it was done with such gross recklessness or carelessness as to amount to a heedless indifference to the safety and rights of others.

And Second, the State must prove that this unlawful (or) criminally negligent act proximately caused the victim's death.

If the victim died by accident or misadventure, that is, without wrongful purpose or criminal negligence on the part of the defendant, the defendant would not be guilty. The burden of proving accident is not on the defendant. His assertion of accident is merely a denial that he has committed any crime. The burden remains on the State to prove the defendant's guilt beyond a reasonable doubt.

Final Mandate on All Charges and Defenses

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant, acting with malice, killed the victim with a deadly weapon thereby proximately causing the victim's death, that the defendant intended to kill the victim, and that the defendant acted after premeditation and with deliberation, it would be your duty to return a verdict of guilty of first degree murder. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first degree murder.

If you do not find the defendant guilty of first degree murder, you must determine whether he is guilty of second degree murder.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant intentionally and with malice wounded the victim with a deadly weapon, thereby proximately causing the victim's death, it would be your duty to return a verdict of guilty of second degree murder. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of second degree murder. If you do not find the defendant guilty of second degree murder, you must consider whether he is guilty of voluntary manslaughter.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant intentionally wounded the victim with a deadly weapon, thereby proximately causing the victim's death, but the State has failed to satisfy you beyond a reasonable doubt that the defendant acted with malice, it would be your duty to return a verdict of guilty of voluntary manslaughter.

If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of voluntary manslaughter. You must then determine whether the defendant is guilty of involuntary manslaughter.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant killed (or) acted in a criminally negligent way thereby proximately causing the victim's death, it would be your duty to return a verdict of guilty of involuntary manslaughter. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

# STATE OF UTOPIA

File No_____5320_____
In the General Court of Justice

_____Mock_____ County

| STATE VERSUS<br>*Name of Defendant*<br>*Tracy Palmer* | | **INDICTMENT**<br>**MURDER**<br>✓ *First Degree* □ *Second Degree* |
|---|---|---|
| *Date of Offense*<br>*May 19, 2007* | *Offense in Violation of G.S.*<br>*14-17* | |

*The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously and of malice aforethought did kill and murder.*

Signature of Prosecutor

/ S/

| **WITNESSES** | |
|---|---|
| [X] *Betsy Hodges* | [X] *James Smith* |
| [X] *Catherine Russ* | [X] *Lela Bridgers* |
| [X] *Joseph Roseborough* | [X] *Catherine Hicks* |
| [X] *Aimee Maxwell* | [X] *Murielle Saks* |

The Witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and, after hearing testimony, this Bill was found to be:

[X] A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

[ ] NOT A TRUE BILL.

| Date | *Signature Of Grand Jury Foreman* |
|---|---|
| *July 2, 2007* | */ S /* |

# STATUTES

**§ 14-17. Murder in the first and second degree defined; punishment.**
A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine, or methamphetamine, when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon.

# CASE LAW

The following excerpts are from Case Law concerning the legal issues raised in this Mock Trial Case.
Only portions of the opinions are provided, and only those portions may be relied upon in closing arguments.
Citations and internal quotation marks are omitted in the excerpts of the cases that follow.

State v. Rios, 169 N.C. App. 270 (2005)
A killing is deliberate for purposes of first degree murder if the Defendant acted in a cool state of blood, in furtherance of a fixed design for revenge or to accomplish an unlawful purpose and not under the influence of a violent passion, suddenly aroused by lawful or just cause or legal provocation.
AND:
Evidence that the defendant and the victim argued without more, is insufficient to show that the defendant's anger was strong enough to disturb his ability to reason, as required to negate the deliberation element of first degree murder charge.

State v. McAdoo, 165 N.C. App. 486 (2004)
"Deliberation" for purposes of a first degree murder charge, means an intent to kill carried out in a cool state of blood in furtherance of a fixed design for revenge or to accomplish an unlawful purpose and not under the influence of a violent passion, suddenly aroused by lawful or just cause or legal provocation.

State v. Pope, 163 N.C. App. 486 (2004)
"Premeditation", for purposes of first-degree murder, means that the Defendant formed the specific intent to kill the victim some period of time, however short, before the actual killing.

State v. Williams, 144 N.C. App. 526 (2001)
In the context of first-degree murder "premeditation" means that the Defendant thought about killing for some length of time, however short, before he killed.
AND:
Although there may have been time for deliberation, if the purpose to kill was formed and immediately executed in a passion, especially if the passion was aroused by a recent provocation or by mutual combat, the murder is not deliberate or premeditated.
ALSO:

For killing to be "deliberate" Defendant need not have been placid or unemotional; rather, whatever passion defendant felt must not have been such as to overwhelm his or her faculties and reason. State v. Williams, 334 N.C. 440 (1993)

State v. Leazer, 353 N.C. 234 (2000)
Premeditation and deliberation are ordinarily not susceptible to proof by direct evidence and therefore must usually be proven by circumstantial evidence.

State v. Chavis, 134 N.C. App. 546 (1999)
"Premeditation", for purposes of a first degree murder prosecution, means that the act was thought out beforehand for some length of time, however short; however, no particular amount of time is necessary for the mental process of premeditation.
AND:
Deliberation, for purposes of first degree murder prosecution, does not require a mind free of passion but merely one that has not been overcome by passion stimulated by sufficient provocation. Both are usually proved by circumstantial evidence. Relevant factors include lack of provocation and the Defendant's actions and statements before and after killing.

State v. Wilds, 133 N.C. App. 195 (1999)
Examples of circumstances that may raise an inference of premeditation and deliberation in prosecution for first degree murder include: (1) conduct and statements of the Defendant before and after the killing, (2) threats made against the victim by the Defendant, ill will or previous difficulty between the parties; and (3) evidence that killing was done in a brutal manner.

State v. Cooper, 213 S.E.2d 305 (1975)
A specific intent to kill is a necessary ingredient of premeditation and deliberation.

State v. Faust, 254 N.C. 101 (1961)
If purpose to kill was formed and immediately executed in a passion, especially if aroused by recent provocation or mutual combat, murder is not deliberate and premeditated but if design to kill was formed with deliberation and premeditation it is immaterial that Defendant was in passion when design was carried into effect.

State v. Ruof, 269 N.C. 623 (1979)
"Cool state of blood" as used in connection with premeditation and deliberation does not mean absence of passion and emotion, but means that unlawful killing is deliberate and premeditated if executed with a fixed design to kill, notwithstanding that the Defendant was angry or in an emotional state.

State v. Hunt, 330 N.C. 425 (1991)
An unlawful killing is deliberate and premeditated if done as part of a fixed design to kill, notwithstanding the fact that the Defendant was angry or emotional at the time, unless such anger or emotion was strong enough to disturb the defendant's ability to reason.

State v. Owen, 130 N.C. App. 505
The fact that a murder defendant was angry or emotional does not negate a finding of deliberation unless his anger or emotion was strong enough to have disturbed his ability to reason.

State v. Evans, 150 S.E. 678 (1929)
Flight from the scene of homicide is not evidence of deliberation and premeditation necessary to constitute first-degree murder.

# STATEMENT OF ALEX ROME

I, ALEX ROME, BEING OF FULL AGE AND DULY SWORN, DO HEREBY VOLUNTARILY PROVIDE THE FOLLOWING STATEMENT:

My name is Alex Rome. I am a 21-year-old Biology major at the University of Utopia. I am a graduating senior this year. On the night of May 18, 2007, I went to an end-of-year party at Kill Devil Island. Kill Devil is in the middle of Lake Tarheel, which is maybe 15 miles or so north of downtown Utopia. A lot of the kids go to Kill Devil on special weekends to blow off steam. The island is pretty big and it is not uncommon for there to be several groups of people sticking together. Most people usually just pitch a tent on the island and sleep there until the sun comes up.

I'd say there were probably about 100 people at Kill Devil on the night that Drew Barnes turned up dead. I had been drinking that night. I think I had about six beers that night, maybe more. I do remember that Drew Barnes was on the island, although he was with a different group of people. I knew Drew from around campus. Drew was the president of his class, and he was really cool. Drew was super smart ,and everybody just liked him.

At about 10 pm that night I overheard Drew having an argument with someone. At the time, I didn't know the name of the other person that Drew was arguing with, but I had seen him before around campus. I later found out that the other person was Tracy Palmer. I heard Drew say that he was "sorry" or something to that effect, but Tracy kept interrupting him and was hollering. Tracy was clearly upset and said "that's it, I can't take it anymore, you're not going to do this to me again." Tracy was pointing his finger at Drew during this exchange. I'd say I was about 50 feet away from Tracy and Drew when I overheard the argument.

About five hours later, around 3 a.m., I saw Tracy again. I had to go to the bathroom, if you know what I mean, so I was kind of in a wooded area where no one could really see me. I had just turned to walk out of the area when I saw Tracy walking past where I was. Tracy was coming from the general direction of where Drew was sleeping. It was really weird. I said "hey" just to be friendly and Tracy didn't even acknowledge that I was there. He just kind of had this totally empty straight-forward stare and was walking kind of slow. It was almost like he was a zombie or something. He didn't even turn his head an inch in my direction. I just figured maybe he had too much to drink or something, although I never actually saw him drinking. I let Tracy pass and didn't think anything of it again until the next morning, when somebody said that Drew was dead. I told the police the next morning what I had seen and heard.

Date: September 18, 2007
*Alex Rome*
Alex Rome

# STATEMENT OF LEE JONES

I, LEE JONES, BEING OF FULL AGE AND DULY SWORN, DO HEREBY VOLUNTARILY PROVIDE THE FOLLOWING STATEMENT:

My name is Lee Jones. I have been a police officer with the Utopia Police Department for over 30 years. When I joined the force in 1975, I worked as a beat cop, mostly patrolling the streets of downtown and the university area. In 1978, I went to college part-time and earned a degree in criminal justice. In 1983, I was promoted to detective. I worked for three years in the lesser felonies section, investigating mostly assaults and robberies. In 1986, I became a homicide detective, and I've been working in that position ever since. In addition to my training with UPD, I've also attended training by the FBI, including courses on witness interrogation, computer forensics and general crime scene forensics.

UPD dispatch received an anonymous call on May 19, 2007, at approximately 0600 with a report of an apparent death at Kill Devil island. At that time, we had little information to go on, but we assumed that the island was filled with college kids since it was the end of the school year, and Kill Devil is a known college hang-out. Myself and about 12 other officers took three boats to the island with the intention of locking it down. By locking it down, I mean we intended to prevent people from leaving the island until we had interviewed everybody there. We arrived at Kill Devil at 0645. Kill Devil is inside the city limits of Utopia. We announced to everybody using bullhorns that we would be securing the island as a crime scene and that no one was permitted to leave without our permission.

Shortly after arriving, I came across a young man named Alex Rome. Alex seemed rather hung-over, but was coherent. Alex told me that s/he was aware that Drew Barnes had turned up dead in Drew's tent. Alex told me that s/he had overheard Drew arguing with another student, Tracy Palmer, the night before. Alex further stated that s/he saw Tracy walking at 0300 the night before and that Tracy was walking from the direction of Drew's tent. I immediately ordered one of my deputies to find Tracy Palmer. Meanwhile, I went to Drew's tent.

Upon arriving at Drew's tent, the first thing I noticed was that the tent door was open. I observed a human body lying lifeless in a sleeping bag on the ground. I checked the body and determined that the person was dead. I checked for identification on the body and determined from the identification that the body was that of Drew Barnes. I observed what appeared to be signs of blunt force trauma to the side of Drew's head. The body was face down. I ordered that the area be taped off, and Drew was taken off the island for an autopsy.

I next went to interview Tracy Palmer at approximately 0710. At that time, Tracy was not a suspect and was not in custody. I did start the interview by getting Tracy's consent to take his fingerprints using our department's portable fingerprint kit. I took prints from various persons I spoke with on that day. I asked Tracy if he wouldn't mind talking to me about the night's events. Tracy said "sure." Tracy seemed nervous, disoriented and confused when talking to me. Tracy stated that he had just woken up. He avoided eye-contact with me and seemed to fidget a lot. I questioned Tracy about the argument with Drew that Alex Rome had told me about. Tracy denied that he and Drew had argued the night before and said that Alex Rome was too drunk to know what Alex was talking about. Tracy further said that he had gone to sleep and remained asleep all night until waking up shortly prior to my arrival. At about that time, I noticed a long Maglite flashlight in the corner of Tracy's tent with what appeared to be blood on the end of the flashlight. I asked Tracy if I could search the tent, and Tracy consented. I then recovered the flashlight with what were clearly stains of blood on the end. I preserved the flashlight as evidence for further testing. I then advised Tracy that Tracy was under arrest for the murder of Drew Barnes. I read the Miranda Rights to Tracy and asked if he wished to continue speaking to me. Tracy said that he wanted a lawyer at that time, so I terminated the interview.

I then went to Tracy's dorm room after obtaining a search warrant. I confiscated Tracy's computer and performed a forensic search on it. Although the history of Google searches had been deleted from the computer's memory, I managed to recover all of the internet activity on the computer for the prior 30 days from the hard drive. I discovered that a search had been run using the search terms "sleep walking disorder." I also noticed that a webpage discussing sleepwalking as a defense to murder had been accessed only one week prior to Drew's death. However, many other webpages had also been accessed at around the same time that only dealt with sleepwalking in general. I printed out all of the webpages and preserved them as evidence in connection with my investigation.

Dated: September 26, 2007 *Lee Jones*

# STATEMENT OF MAX SWANSON

I, MAX SWANSON, BEING OF FULL AGE AND DULY SWORN, DO HEREBY VOLUNTARILY PROVIDE THE FOLLOWING STATEMENT:

My name is Max Swanson. I attend UU, and I live on campus in Ashley Hall. I have known Tracy Palmer and Drew Barnes since we were all in kindergarten. Tracy, Drew and I were really good friends growing up together. I still can't believe that Drew is no longer with us. I think of Drew so often; I especially miss Drew's laugh, all those fun times we shared! I wish I could have been there for Drew that night – there were so many times when Drew had my back as we grew up.

The three of us were best friends until high school. During high school, Tracy's relationship with Drew became very strained. It seemed like Tracy and Drew were always competing with each other. For example, Drew beat out Tracy for class president our senior year in high school. Drew was the captain of the soccer team even though Tracy wanted to be captain too. At graduation, Drew was the Valedictorian and was voted Most Likely to be a Fortune 500 CEO, while Tracy barely finished in the top 10%. Although they both applied to Stanford and UU, Drew got into both colleges and UU even offered Drew a full scholarship! Tracy didn't get into Stanford and received a partial scholarship to UU. It just seemed like Drew always one-upped Tracy, and it aggravated Tracy to no end. Drew wasn't exactly a good sport about it. I mean, he seemed to rub it in Tracy's face quite often. By the end of our senior year, those two weren't even talking to each other.

Things seemed to calm down a bit once we all got to UU, mostly because the place was so much bigger than high school. But then, Drew started dating Tracy's ex-girlfriend, Michelle. I was with Tracy when Tracy found out about it. Tracy went ballistic. He was cursing Drew's name, kicking the walls and furniture. I had never seen Tracy so mad or violent before. I had to talk him down right then and there because he wanted to go find Drew to get into it with him. He said that Drew had been dumping on him all his life and that the time had come for Tracy to "put an end to it." I was scared that Tracy would physically go after Drew and do some serious damage. That happened about a month or so before Drew turned up dead. Other than that one occasion though, Tracy was a very calm individual who would always try to avoid confrontations. Given that I've known Tracy all of his life, I just don't think that Tracy could have intentionally killed Drew.

I lived next door to Tracy when we were growing up. I know from personal experience that Tracy would sleep-walk at night. I don't think it happened very often, but I've seen Tracy sleepwalk myself. One time, back in high school, I was getting home from a late night out when I saw Tracy in his front yard. It was about 1:30 a.m. I went to say hi to him. It was really strange. He was in his pajamas and he was just kind of walking around in circles in the driveway. He was mumbling, and it sounded like he was upset. I heard him saying Drew's name, but I couldn't make out anything else. This was right after Drew beat out Tracy for class president. His eyes were even open, but he looked like he was in a trance. He didn't realize I was standing there or trying to get his attention. I knew that he was a sleepwalker, so I didn't want to wake him up because I had heard that could be dangerous. I got his dad up and left the situation with him. I talked to Tracy about it later, and he didn't remember anything about what had happened.

Dated: September 25, 2007

Max (ine) Swanson
Maxine Swanson

# STATEMENT OF TRACY PALMER

I, TRACY PALMER, BEING OF FULL AGE AND DULY SWORN, DO HEREBY VOLUNTARILY PROVIDE THE FOLLOWING STATEMENT:

I am a sophomore at the University of Utopia, and I reside in room 112 located in Jordan Hall. I knew Drew Barnes for practically my entire life. We were best friends until high school. Drew became a real jerk in high school. He was always competing with me in everything – and he'd sure let me know it every chance he got. For example, when he was elected class president in high school, he tried to "console" me and told me that I could be his personal assistant. When he became Drum Major, he would always try to use me as an example or embarrass me whenever he could. It just never ended. I didn't feel competitive with him though. I was just doing the best I could do.

I didn't hang around Drew much once we got to college. We had been at UU for 2 years when Drew died. During that time, I maintained a 3.8 GPA, became a member of Beta Alpha Rho, a pre-law fraternity, and held a part-time job as a file clerk for a local criminal defense lawyer. I have never even so much as had a parking ticket in my life before the charges about Drew were brought against me. At the time of Drew's death I was under a lot of stress. I was getting read for a big mock trial tournament in addition to working and getting ready for summer classes. I was probably only sleeping about 3 to 4 hours a night.

About a month before that night at Kill Devil Island, I found out that Drew had been dating my ex-girlfriend Michelle. Drew didn't even have the nerve to tell me. I found out from somebody else, I don't remember who told me. Sure I was upset, but Michelle and Drew probably deserved each other, so I didn't think much of it.

I went to Kill Devil Island on the night of May 18, 2007. I was there with a group of friends minding my own business and reflecting on the prior year of school. I was walking on the beach by myself when Drew suddenly came up to me and started talking. I guess he found out that I was upset about his dating Michelle based on what he was saying. We talked about it, but at no time did I ever raise my voice or threaten him in any way. I understand Alex Rome claims I was threatening Drew that night. Alex Rome wasn't anywhere near me during that conversation. Regardless, I saw Alex that night and Alex was so drunk s/he kept running around saying s/he was Mighty Mouse.

I went to sleep that night at about midnight and didn't wake up until the next morning when I heard a whole bunch of people talking. That's when I learned that Drew had died during the night. The next thing I knew I was being questioned by a police officer. I told the police officer that he could search my tent because I had nothing to hide. That's when I saw my flashlight with blood on it. I couldn't believe my eyes. I obviously brought my flashlight with me, but I had no idea how blood got on it. I certainly didn't do anything that I know of to cause that blood to get on the flashlight.

I was diagnosed with somnambulism when I was 8 years old. That's sleepwalking. My mom says that I have been sleepwalking ever since I stopped sleeping in a crib. I probably sleepwalk about 4-5 times a year and I only know it if there is some external evidence or clue that I had been out of bed the night before. In this case, I have no memory of ever getting out of bed or leaving the tent. I guarantee you that if I did go into Drew's tent that night, I had no idea what I was doing or that I was even doing it. I certainly did not murder Drew Barnes. I admit that I didn't like him, but that doesn't mean I'd kill him.

I did some research on the internet from time to time about sleepwalking. I was concerned about my sleepwalking, and I would occasionally read websites about what sleepwalking is, how to control it and things like that. I admit that I did once visit a website about crimes committed while sleepwalking, but that had nothing to do with Drew. It was simply one of the sites that came up on a Google search, and I was curious about what it said.

Dated: October 2, 2007

Tracy Palmer

Tracy Palmer

# STATEMENT OF A.M. BIEN, M.D.

I, A.M BIEN, MD, BEING OF FULL AGE AND DULY SWORN, DO HEREBY VOLUNTARILY PROVIDE THE FOLLOWING STATEMENT:

My name is Dr. A.M. Bien. I am a neurologist at the University of Utopia Hospital System and I am the vice-president of the hospital's sleep clinic. My specialty is sleep disorders known as parasomnias. Parasomnias are sleep-related behaviors which include sleepwalking. I have been practicing medicine since 1975 and have published many textbooks and articles on the subject of parasomnias. I was asked by the lawyers defending Tracy Palmer to examine and evaluate Tracy's condition.

There are several factors which are universally accepted by the medical profession to support a diagnosis of sleepwalking disorder. The criteria for diagnosis are 1) a blank staring face, relative unresponsiveness to others, and an inability to be awakened except with great difficulty during sleepwalking, 2) amnesia for the episode, coupled with some confusion or disorientation, after awakening, 3) significant distress in social, occupational, or other functions, and 4) a lack of evidence that the behavior was due to the direct effects of substance (e.g. drug) abuse, medication, or a general medical condition. All criteria must be present to support a diagnosis of somnambulism, or sleepwalking.

Generally, childhood parasomnias do not usually pose a danger to the child or to others and typically go untreated. Sleepwalking will usually occur during the first hour or two of sleep, after there has been an abrupt arousal from slow-wave sleep. This is a result of an abnormality in the transition from non-REM to REM sleep. When aroused, a sleepwalker will have impaired responsiveness to visual stimuli, and the sleepwalker will exhibit a period of confusion before the sleepwalker will regain full waking consciousness. Adult sleepwalkers differ from childhood sleepwalkers in that children have more slow, random and simple movements, whereas adult movements are quick, impulsive and goal directed, which can result in violent acts.

It is difficult for people to understand how it is possible for a person who is sleepwalking to orient well in walking, talking, but cannot recognize that he/she is committing a violent act. However, it's more common than the average person might think. There are multiple reported instances of people committing murder, assault and even rape while sleepwalking. Many of these people were even acquitted of criminal charges by juries.

It is common for a sleepwalker not to hear others, including their victims, cry out. Sleepwalkers also do not register pain when they themselves are hurt while sleepwalking. Moreover, it can take as long as an hour for consciousness to fully return to the sleepwalker once awake. One of the most vexing questions is motivation to commit a violent act while sleepwalking. The acts take place while the sleepwalker is unaware during the event. This means that a sleepwalker is incapable of forming a conscious specific intent to do harm to something or somebody.

On July 21, 2007, I was contacted by Tracy's family and attorney. They requested that I perform an extensive pretrial workup to determine if Tracy suffered from a sleepwalking episode on May 18/19, 2007. Typically, a workup will consist of a complete neurological examination, psychological testing, 4 nights of all-night sleep recording, and a family pedigree of relatives with a history of sleepwalking or other forms of parasomnias. The interview with Tracy's family revealed that Tracy had a history of sleepwalking. My psychological work-up of Tracy indicated that Tracy had trouble dealing with anger and resentment issues stemming from what he believed to be a pattern of life failures. Further, Tracy was suffering from an unusual amount of stress given his workload at the time of the victim's death. I also conducted the 4 nights of sleep recording. Tracy definitely demonstrated brain wave activity consistent with insomnia and sleepwalkers. Based upon a reasonable degree of scientific certainty, it is my opinion that Tracy's profile fits that of a sleepwalker and that based upon all of the evidence, Tracy has in fact suffered from sleepwalking in the past. I cannot state with any certainty as to whether Tracy was sleepwalking on the night of May 18/19, 2007, but the evidence is certainly consistent with a sleepwalking episode. However, I must admit that it is very rare for a sleepwalker to commit an act of violence while sleepwalking.

Dated: August 24, 2007
Dr. Am Bien

# STATEMENT OF BOBBY D. AYERS

I, BOBBY D. AYERS, BEING OF FULL AGE AND DULY SWORN, DO HEREBY VOLUNTARILY PROVIDE THE FOLLOWING STATEMENT:

My name is Bobby D. Ayers. I have known Tracy Palmer since the ninth Grade. We were just casual friends during high school, but we became really good friends once we got to college. I go to UU and am majoring in psychology. I knew Drew Barnes during high school also.

We both like the outdoors. In fact, we often go biking together during the school year in college. We were busy finishing up with exams, however, so I hadn't seen much of Tracy in the weeks leading up to the party at Kill Devil Island. During the early morning of May 19, I was awoken by birds chirping and hopping about in the trees near my tent. So, I decided to make the most of this opportunity and go to the pier on the east side of the island to hang out and watch the sunrise. Nothing like watching the sun rise to start your day, I thought. The wind was very much picking up, so I decided to bring my jacket. Because I wanted to catch up with Tracy, I made a last minute decision to visit Tracy's tent and see if he wanted to come with me to the pier. This was at about 6:10 a.m.; I remember checking my watch as I walked towards where I thought Tracy was camped.

Tracy and I had been camping together various other times in college so I can spot out Tracy's tent anywhere --- he has an orange and green tunnel tent that is shaped like a sausage. Most people I know have dome tents. Believe me, Tracy's tunnel tent stood out on that island. As I approached the tent, I noticed the polyester door flap was fluttering in the wind, making a lot of noise. Of course, dawn was just about to break so I couldn't see much of anything. I am pretty sure, I think, I did hear footsteps of something or someone running toward the direction of the wooded area behind Tracy's tent, as I approached. I got a little weirded out; so, for some extra light, I got my flashlight out of my jacket pocket and turned it on.

By then, I was standing next to the tunnel tent. I flashed my light around the tent. I noticed two boot footprints near the tent's opening – obviously from someone moving away toward the wooded area. The prints looked fresh. I looked in and found Tracy very much asleep, faced down in his sleeping bag. I remember thinking that the situation was very strange because I knew Tracy to be a great camper who would never leave the tent entrance open before going to sleep. I went partially inside the tent and tried to wake Tracy up by shaking his shoulder. He just mumbled and turned over. When nothing worked, I decided to let my friend sleep – obviously Tracy very much needed more sleep.

A lot of people knew about how much Tracy disliked Drew. However, the Tracy I know loves nature, is quite peaceful, and is a good friend to many people.

Dated: September 26, 2007
Bobby Ayers
Bobby D. Ayers

May 22, 2007
Case No. 98-4751

Exhibit 1

**MOCK COUNTY CORONER MEDICAL EXAMINER**
**123 METROPOLITIAN LANE**
**UTOPIA, NC 76543**

## AUTOPSY REPORT

PATHOLOGIC EXAMINATION ON THE BODY OF
**DREW BARNES**

DIAGNOSES

1 Epidural Hematoma
2 Depressed skull fracture
3 Massive internal bleeding
4 Skin Injuries (see external examination).

OPINION

**CAUSE OF DEATH**: It is my opinion that the decedent Drew Barnes' death was the result of BLUNT FORCE TRAUMA to the head.

**MANNER OF DEATH**: Homicide.

Joe Osyka, DO, MPH, Chief Medical Examiner, Mock County, Utopia

POSTMORTEM EXAMINATION OF THE BODY OF
DREW BARNES

**AUTOPSY**: The autopsy is performed by Joe Osyka, Do, MPH, Chief Medical Examiner, at 0900 hours, May 22, 2007

**CLOTHING**: The body is received unclothed.

**EXTERNAL EXAMINATION**: The body is that of a normally developed white adult. Rigor mortis is present equally and symmetrical in all joints. The skull on the right side of the head is indented. The temple area also shows evidence of trauma – bruising and scrapes. External bruise includes partial imprint of ridged surface.

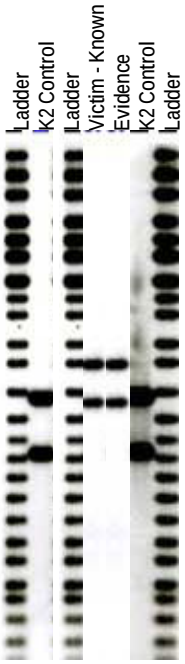
The head hair is black in color. The eyes are closed. The corneas are clear. The irises are brown. The nose, lips and mouth are unremarkable. Scattered areas of postmortem discoloration are on the left side of the lower lip and in the perioral skin. The teeth are natural and in fair repair. No injuries are identified on the external neck. The chest is unremarkable. The abdomen is unremarkable. The extremities are equally and symmetrically developed. Fingerprint ink is present on the hands, bilaterally. The left forearm shows one long unhealed scratch. The fingernails and toenails are short in length and clean.

**SIGNIFICANT FINDINGS:**

1 Bleeding between the dura mater and the skull bone (epidural hematoma)
2 Bleeding into the brain tissue (cerebral contusion)
3 Skull Fracture on right side of the head
4 Scratch on left forearm

**INTERNAL EXAMINATION: CENTRAL NERVOUS SYSTEM**: The scalp, subgaleal soft tissue and parietal bones show evidence of injury and a skull fracture is obvious. On entering the cranial cavity the membranous compartments show signs of hemorrhage. These symptoms are common after forceful impact by blunt objects—most commonly, hammers, rocks, or other heavy but fairly small objects. On serial sectioning the brain reveals no grossly visible changes of natural disease.

Exhibit 2




DNA ANALYSIS REPORT

Requested by: Lee Jones, Police Officer, Utopia PD, Mock County.

Victim: White male, Drew Barnes, age 20. SSN # 123-45-6789
Date collected: May 19, 2007

Evidence: Blood splatters found on black Maglite flashlight (*exhibit 3*)
Date collected: May 19, 2007

DNA testing confirms that the blood found on the Maglite flashlight is an identical genetic match to the blood of the victim. The odds of the genetic match are 1:1,000,000,000.

GeneRight Corporation is accredited by the American Society of Crime Laboratory Directors, Laboratory Accreditation board for DNA forensic testing.

Maria Suarez, PhD, President, Crime Lab Director

Sworn and subscribed to me on this day of May 30, 2007

_____*Joan Mack*_____
Notary Public

Exhibit 3

Exhibit 4


State Bureau of Investigations

Department of Justice

401 Main Street

Utopia, NC 27776

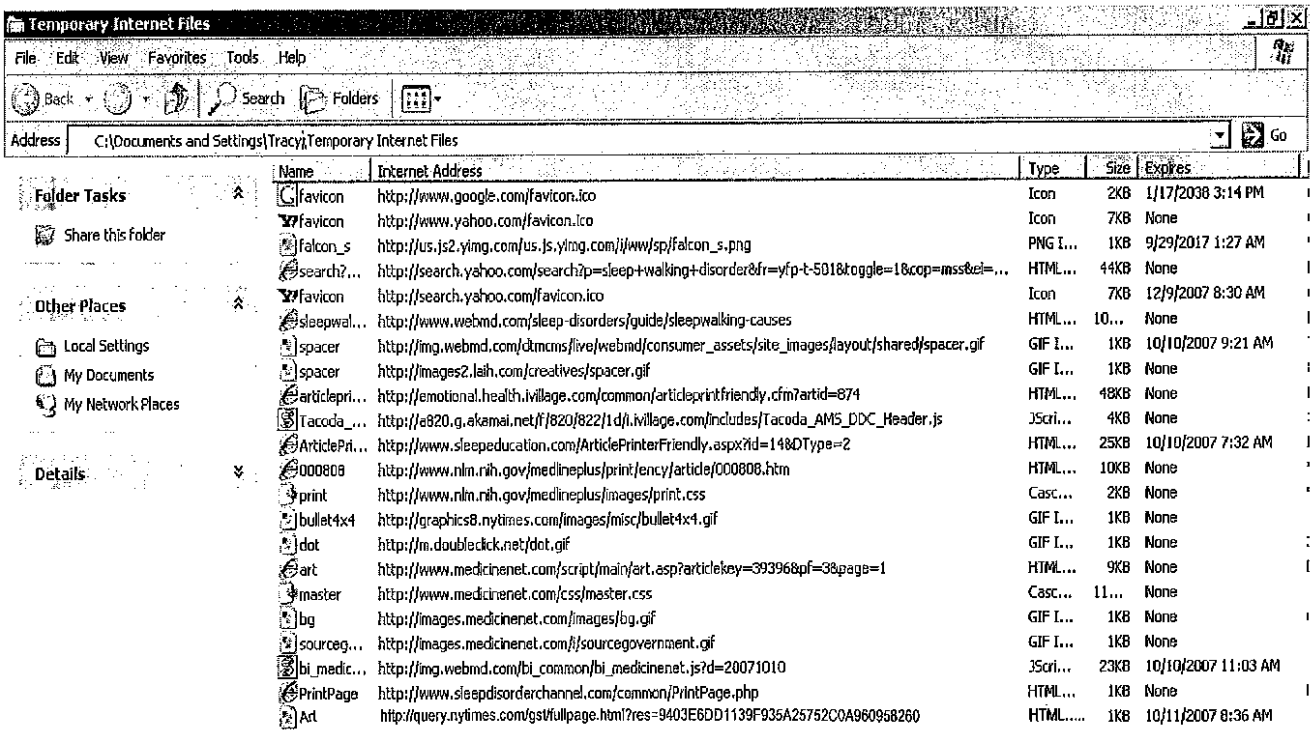

May 25, 2007

REPORT

Tests were performed on latent prints found on black Maglite Flashlight (serial # 3X245) recovered from Mr. Tracy Palmer's tent at the south side of Kill Devil Island on May 19, 2007. Prints were compared to known prints of Tracy Palmer. Most prints were shown to be consistent. Two latent prints, however, were not shown to be consistent to known prints of Tracy Palmer and were inconsistent with any prints in SBI's Statewide Automated Fingerprint Identification System.

CC: Lee Jones, Police Officer, Utopia PD, Mock County

Exhibit 5




| Name | Internet Address | Type | Size | Expires |
|---|---|---|---|---|
| favicon | http://www.google.com/favicon.ico | Icon | 2KB | 1/17/2038 3:14 PM |
| favicon | http://www.yahoo.com/favicon.ico | Icon | 7KB | None |
| falcon_s | http://us.js2.yimg.com/us.js.yimg.com/i/ww/sp/falcon_s.png | PNG I... | 1KB | 9/29/2017 1:27 AM |
| search?... | http://search.yahoo.com/search?p=sleep+walking+disorder&fr=yfp-t-501&toggle=1&cop=mss&el=... | HTML... | 44KB | None |
| favicon | http://search.yahoo.com/favicon.ico | Icon | 7KB | 12/9/2007 8:30 AM |
| sleepwal... | http://www.webmd.com/sleep-disorders/guide/sleepwalking-causes | HTML... | 10... | None |
| spacer | http://img.webmd.com/dtmcms/live/webmd/consumer_assets/site_images/layout/shared/spacer.gif | GIF I... | 1KB | 10/10/2007 9:21 AM |
| spacer | http://images2.laih.com/creatives/spacer.gif | GIF I... | 1KB | None |
| articlepri... | http://emotional.health.ivillage.com/common/articleprintfriendly.cfm?artid=874 | HTML... | 48KB | None |
| Tacoda_... | http://a820.g.akamai.net/f/820/822/1d/i.ivillage.com/includes/Tacoda_AMS_DDC_Header.js | JScri... | 4KB | None |
| ArticlePri... | http://www.sleepeducation.com/ArticlePrinterFriendly.aspx?id=148&DType=2 | HTML... | 25KB | 10/10/2007 7:32 AM |
| 000808 | http://www.nlm.nih.gov/medlineplus/print/ency/article/000808.htm | HTML... | 10KB | None |
| print | http://www.nlm.nih.gov/medlineplus/images/print.css | Casc... | 2KB | None |
| bullet4x4 | http://graphics8.nytimes.com/images/misc/bullet4x4.gif | GIF I... | 1KB | None |
| dot | http://m.doubleclick.net/dot.gif | GIF I... | 1KB | None |
| art | http://www.medicinenet.com/script/main/art.asp?articlekey=93396&pf=3&page=1 | HTML... | 9KB | None |
| master | http://www.medicinenet.com/css/master.css | Casc... | 11... | None |
| bg | http://images.medicinenet.com/images/bg.gif | GIF I... | 1KB | None |
| sourceg... | http://images.medicinenet.com/i/sourcegovernment.gif | GIF I... | 1KB | None |
| bi_medic... | http://img.webmd.com/bi_common/bi_medicinenet.js?d=20071010 | JScri... | 23KB | 10/10/2007 11:03 AM |
| PrintPage | http://www.sleepdisorderchannel.com/common/PrintPage.php | HTML... | 1KB | None |
| Art | http://query.nytimes.com/gst/fullpage.html?res=9403E6DD1139F935A25752C0A960958260 | HTML..... | 1KB | 10/11/2007 8:36 AM |

The above is a snapshot of the Temporary Internet Files discovered during the computer forensics search component of Tracy Palmer's computer.

Exhibits A-F

Exhibits A-F can be found on the following pages. These exhibits are website pages printed out by Police Officer Lee Jones' office.

| | |
|---|---|
| Exhibit A | Yahoo Search Page, "sleepwalking disorder" Page 1-1 |
| Exhibit B | WebMD Sleep Disorders Guide Pages 1-2 |
| Exhibit C | iVillage Total Health "sleepwalking" Page 1-6 |
| Exhibit D | Sleep Education.com Pages 1-3 |
| Exhibit E | Medline Plus, Medical Encyclopedia Pages 1-2 |
| Exhibit F | NY Times When Can Killers Claim Sleepwalking Pages 1-4 |

Exhibit A





1-10 of 423,000 for sleep walking disorder (About) - 0.03 sec

**We have included *sleepwalking* disorder results - Show only sleep walking disorder**

1. **Sleepwalking**
**Sleepwalking** is a **disorder** characterized by complicated actions ... Related **sleep walking** articles: **Sleep walking** - on WebMD. **Sleep walking** - on MedicineNet ...
www.**emedicinehealth.com/sleepwalking**/article_em.htm - 37k - Cached

2. **Sleepwalking** - Wikipedia, the free encyclopedia
(Redirected from **Sleepwalking disorder**) Jump to: navigation, ... a b **Sleep Walking** Overview, Causes and Treatment ^ **Sleepwalking** at h2g2 ^ a b Rachel Nowak. ...
**en.wikipedia.org**/wiki/**Sleepwalking_disorder** - 46k - Cached

3. MedlinePlus Medical Encyclopedia: **Sleep walking**
**Sleep walking** is a **disorder** that occurs when a person walks or does another ... The cause of **sleep walking** in children is usually unknown but may have to do ...
www.**nlm.nih.gov**/medlineplus/ency/article/000808.htm - 22k - Cached

4. **sleepwalking**
**Sleepwalking** is a rapid eye movement (REM) behavior **disorder** occurring in the ... In adults, **sleep walking** is usually associated with a **disorder** of the mind but ...
www.**crescentlife.com/disorders/sleepwalking**.htm - 15k - Cached

5. Healthinmind/MentalDisorders/SleepDisorders/**SleepWalking**
**Sleepwalking Disorder**. Like sleep terror **disorder, sleepwalking** tends ... If **Sleepwalking Disorder** also has features of Sleep Terror **Disorder**, the victim ...
**healthinmind.com**/english/**sleepwalking**.htm - 15k - Cached

6. **Sleepwalking**
**Sleepwalking** is a sleep **disorder** effecting an estimated 10 ... I am interested in **sleep walking**. I did it as a child and have started doing it again. ...
**serendip.brynmawr.edu**/bb/neuro/neuro99/web1/Howard.html - 12k - Cached

7. **Sleepwalking disorder** - Definition, Description, Causes and symptoms ...
**Sleepwalking disorder**, also called somnambulism, is characterized by repeating ... **Sleepwalking disorder** is one of several sleep disorders listed in the ...
www.**minddisorders.com**/Py-Z/**Sleepwalking-disorder**.html - 20k - Cached

8. BehaveNet® Clinical Capsule_ : **Sleepwalking Disorder**
DSM-IV: **Sleepwalking Disorder** ... Diagnostic criteria for 307.46 **Sleepwalking Disorder** (cautionary statement) ... from the **sleepwalking** episode, there is ...
www.**behavenet.com**/capsules/**disorders**/sleepwalkdis.htm - 5k - Cached

9. Discovery Health :: Diseases & Conditions :: **sleepwalking disorder**
**Sleepwalking** is a sleep **disorder** in which an individual performs actions usually ... **sleepwalking disorder**. Written by Ann Reyes, Ph.D. Last reviewed on 1/31 ...
**health.discovery.com**/encyclopedias/illnesses.html?article=732&page=1 - 45k - Cached

10. **Sleepwalking** Treatments
There are a number of steps a person can take to lessen the impact of **sleepwalking**. ... options for long-term treatment of persons with a **sleepwalking disorder**. ...
www.**webmd.com/sleep-disorders**/guide/how-is-**sleepwalking**-treated - 104k - Cached

WebMD
Better Information. Better health.

Article Link: http://www.webmd.com/sleep-disorders/guide/sleepwalking-causes

# Sleep Disorders Guide

Select An Article | All Subchapter Articles: | GO

## Sleep Disorders: Sleepwalking Basics

Sleepwalking is a sleep disorder that causes people to get up and walk during their sleep.

Episodes of sleepwalking typically occur when a person is in the deep stages of sleep. The sleepwalker is unable to respond during the event and does not remember sleepwalking. In some cases, sleepwalking is associated with incoherent talking.

Sleepwalking occurs most commonly in childhood but can last into adulthood.

### Symptoms

Episodes of sleepwalking can range from quiet walking about the room to agitated running or attempts to "escape." Typically, the eyes are open with a glassy, staring appearance as the person quietly roams the house. On questioning, responses are slow or absent. If the person is returned to bed without awakening, the person usually does not remember the event.

Older children, who may awaken more easily at the end of an episode, often are embarrassed by the behavior (especially if it was inappropriate).

### What Causes a Person to Sleepwalk?

Several different factors may be involved in the development of sleepwalking. These may include genetics (traits that run in families), environmental and medical conditions.

Sleepwalking is not associated with other sleep problems, sleeping alone in a room or with others, fear of the dark, or anger outbursts.

### Genetics

Sleepwalking occurs more frequently in identical twins, and is 10 times more likely to occur if a first-degree relative has a history of sleepwalking. Therefore, it is thought the condition can be inherited.

### Environmental Factors

Certain factors may cause a person to sleepwalk, such as:

- Sleep deprivation
- Chaotic sleep schedules
- Stress
- Alcohol intoxication
- Drugs such as sedative/hypnotics (drugs that promote relaxation or sleep), neuroleptics (drugs used to treat psychosis), stimulants (drugs that increase activity), and antihistamines (drugs used to treat symptoms of allergy)

**Medical Conditions**

Medical conditions that have been linked to sleepwalking include:

- Arrhythmias (abnormal heart rhythms)
- Fever
- Gastroesophageal reflux (food or liquid regurgitating from the stomach into the food pipe)
- Nighttime asthma
- Nighttime seizures (convulsions)
- Obstructive sleep apnea (condition in which breathing stops temporarily while sleeping)
- Psychiatric disorders, for example, posttraumatic stress disorder, panic attack, or dissociative states, such as multiple personality disorder

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**WebMD Medical Reference from eMedicineHealth**

**View Article Sources**

Reviewed by Leonard J[redacted]onne, MD on January 01, 2007

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Back

iVillage Total Health

This information can be found by going to http://emotional.health.ivillage.com/

# Sleepwalking

(Sleepwalking Disorder, Somnabulism)

## Summary

Sleepwalking, or *somnambulism,* is a disorder marked by walking during sleep. Patients may also engage in other activities, such as talking or eating, during sleep. Sleepwalking typically occurs during deep sleep.

Sleepwalking can occur at any age, but it is more common in **children**. Most children outgrow sleepwalking by the time they reach adolescence.

Some possible causes of sleepwalking are environmental factors (e.g., sleep deprivation and **stress**), overuse of **alcohol**, medications, medical conditions (e.g., fever, asthma) and **psychiatric conditions** (e.g., **post-traumatic stress disorder, panic disorder**). Sleepwalking also appears to be associated with migraine headaches.

Signs and symptoms include walking while asleep, having a blank stare and having no recollection of the episode after waking.

Sleepwalking can usually be diagnosed when a physician listens to a description of the events during a **physical examination**. In some cases, patients may be asked to participate in a **sleep study** or be referred to a **mental health professional** for further evaluation, especially if sleepwalking is **chronic**, causes daytime sleepiness, or is believed to result from a **mental disorder**.

Sleepwalking may be treated in a variety of ways, depending upon the age of the patient and its cause. Most children do not require treatment. Some patients only need reassurance and support. Others may be treated with medications (e.g., **benzodiazepines**) or therapy (e.g., relaxation therapy). Some techniques for ensuring that an environment is safe for people who sleepwalk include locking doors and windows, blocking stairways and removing objects that may cause trips and falls.

## About sleepwalking

Sleepwalking is a disorder characterized by walking during sleep. Patients may also engage in other activities, such as talking or eating, during sleep. Sleepwalking is also called *somnambulism*.

Sleep is divided into five stages: stages 1 through 4, which range from the lightest sleep to deep sleep, and the fifth stage, which is known as rapid eye movement (REM) sleep. During a typical night's sleep, a person cycles through these stages approximately every 90 minutes. Sleepwalking usually occurs during deep sleep (stages 3 and 4 of the sleep cycle) in the first third of the sleep period, early in the night. It infrequently occurs during REM sleep, closer to

morning.

Sleepwalking is a type of **parasomnia**, a sleep disorder characterized by abnormal behaviors during sleep. Parasomnias include abnormalities within the stages of the sleep cycle.

While sleepwalking, people experience reduced alertness, have a blank stare and are usually unresponsive to attempts to speak with them or wake them. If awoken, a person will experience confusion for a few moments, but will return to a normal state of mental and physical functioning. Sleepwalking may include a variety of behaviors. In mild cases, sleepwalkers may sit up in bed, rub their eyes, appear awake, look around and pick at their clothing, bed sheets or blankets.

People who sleepwalk may engage in simple activities, such as eating, dressing or using the toilet. If patients talk while sleepwalking, the speech is typically garbled and incomprehensible. They may also engage in more complex activities, such as moving furniture or driving a car. Sleepwalking episodes may last for a few minutes or a half hour or longer. After sleepwalking, patients do not usually recall the episode.

One myth is that people should not be wakened while sleepwalking. It is not dangerous to awaken people who are sleepwalking, although it may be difficult and it is common for them to be confused and disoriented afterwards. Another common misperception is that people cannot be injured while sleepwalking. Injuries can occur as a result of trips, falls and other actions that may occur while sleepwalking.

Sleepwalking can occur at any age, but it is more common in **children**. According to the **American Psychiatric Association** (APA), 10 to 30 percent of children have experienced at least one episode of sleepwalking and 2 to 3 percent have frequent episodes. Among adults, 1 to 7 percent have experienced an episode of sleepwalking, and between 1 and 5 percent have sleepwalking disorder, characterized by frequent episodes that cause significant distress or dysfunction. Most children outgrow sleepwalking by adolescence. Adults who sleepwalk usually did so as children.

## Potential causes of sleepwalking

Most causes of sleepwalking among **children** are unknown. Children who sleepwalk may do it several times and then outgrow the behavior by adulthood. For some children, sleepwalking may be associated with fatigue, sleep loss, **anxiety** or changes in their environment at home or school.

Among adults, there are many potential causes of sleepwalking. They include:

- Heredity. Research suggests that sleepwalking tends to run in families.
- Environmental factors. Sleep deprivation, irregular sleep schedules and **stress** may all contribute to sleepwalking.
- Excessive **alcohol** use. Consuming too much alcohol may induce sleepwalking in some individuals.
- Medications. Numerous medications may disturb sleep cycles, including **sedatives**, **antipsychotic medications**, stimulants and antihistamines.
- Medical conditions/**sleep disorders**. Numerous conditions and disorders may also affect sleep cycles and contribute to sleepwalking, including:
    - Nighttime **seizures** (convulsions). Sudden, involuntary movements of the muscles.
    - Obstructive **sleep apnea**. A disorder in which a person's breathing stops and

starts many times during sleep.

- **Night terrors**. A sleep disorder in which patients abruptly awaken from deep sleep in a terrified state.
- Pregnancy and menstruation. Both have been linked to higher incidence of sleepwalking.

- **Psychiatric conditions**. Adults who sleepwalk may have another **mental health** condition. Some of those most commonly associated with sleepwalking include:
  - **Post-traumatic stress disorder** (PTSD). Psychiatric illness that occurs after a **traumatic event** in which the threat of injury or death was present (e.g., combat, natural disaster).
  - **Panic disorder**. Disorder marked by repeated, sudden attacks of intense fear that cause severe anxiety symptoms in the body.
  - **Dissociative disorders**. Disorders characterized by the sudden, temporary separation of thoughts, emotions, sensations or memories from the rest of the identity or sense of self.

Children who sleepwalk do not typically have emotional problems.

## Signs and symptoms of sleepwalking

Signs and symptoms of sleepwalking include:

- Walking during sleep
- Exhibiting other behaviors, such as talking, eating or using the toilet, during sleep
- Sitting up and appearing awake during sleep
- Being unresponsive to others' attempts to awaken them
- Having a blank stare with eyes open during sleep
- Being confused or disoriented after waking up
- Having no recollection of a sleepwalking episode after waking up

Sleepwalking does not usually require visiting a physician. However, a physician should be notified if sleepwalking episodes:

- Occur with other symptoms
- Are frequent or persistent
- Are accompanied by dangerous activities (such as driving)
- Result in injury (e.g., from a fall)

## Diagnosis methods for sleepwalking

Most cases of sleepwalking can be diagnosed by a physician who hears a description of the event. A **physical examination** with a **medical history** that includes a list of medications may help identify the cause. In some cases, patients may be asked to participate in a **sleep study**, which measures the physiological aspects of sleep. If sleepwalking is **chronic**, or if it is suspected that a **mental disorder** is causing it, patients may be referred to a **psychiatrist** or other **mental health professional** who may conduct a **psychiatric evaluation** or mental health assessment.

Some questions patients, family members or sleep partners may be asked about sleepwalking episodes include:

- At what time during the sleep period did the sleepwalking occur?
- Does the patient have any memory of the sleepwalking episode?
- Did the patient experience daytime drowsiness or other consequences as a result of the episode?
- Has the patient experienced any physical or emotional **stress** recently?

In some cases, patients may be referred to a sleep center where sleep patterns are analyzed in depth by health professionals who specialize in **sleep disorders**. At the sleep center, a *polysomnogram* (**sleep study**) will typically be performed. This painless test is conducted overnight while patients are sleeping. Electrodes are placed on the face and scalp before sleep. The test monitors electrical activity of the brain (*electroencephalogram*), electrical activity of the heart (*electrocardiogram*) and movements of the muscles (*electromyogram*) and eyes (*electr-ooculogram*). These are measured as patients move through the different stages of sleep.

Many people have an occasional episode of sleepwalking. To be diagnosed with sleepwalking disorder, however, patients must meet **Diagnostic and Statistical Manual of Mental Disorders** (DSM) criteria, which include:

- Patients must have multiple episodes of getting out of bed while sleeping during the first third of the sleep period.
- While sleeping, patients must have blank stares and be unresponsive to attempts to awaken them.
- After waking, patients must have no recollection of sleepwalking episode.
- Patients must regain mental and physical functioning within a few minutes after waking from a sleepwalking episode.
- Sleepwalking must cause significant distress or dysfunction in social, work or other environments.
- Sleepwalking must not be caused by a medical condition, medication or substance use.

## Treatment and prevention of sleepwalking

The treatment of sleepwalking depends upon the age of the patient and its cause. Many **children** outgrow sleepwalking by the time they reach adolescence. In many cases, reassurance and support is the only treatment necessary for both children and adults. In some cases, measures to prevent injury may be taken, such as:

- Locking windows and doors prior to bedtime.
- Removing objects that may cause trips, such as furniture or electrical cords.
- Placing gates on stairways to prevent falls.
- Making sure the sleepwalking patient sleeps in a ground floor bedroom.
- Placing an alarm or bell on the bedroom door.
- Covering windows with heavy drapes.

Underlying medical or **psychiatric conditions** may be treated if they are determined to be the cause of sleepwalking. Some patients who experience sleepwalking are treated with medications, including:

- **Benzodiazepines**. Medications that slow down the **central nervous system**. They are used to produce sedation, induce sleep, relieve **anxiety** and muscle spasms and prevent **seizures**. Extended use of benzodiazepines can result in physical and psychological **dependence**.
- **Antidepressants**. Medications primarily used to treat **depression**, anxiety and problems with **obsession**. Patients should be aware that a physician may need to adjust the dosage or change medications to achieve the best results with minimal side effects. In addition, the U.S. **Food and Drug Administration** (FDA) has advised that antidepressants may increase the risk of **suicidal thinking** in some patients and all people being treated with them – especially children - should be monitored closely for unusual changes in behavior.

Other techniques used to treat sleepwalking include:

- *Relaxation therapy*. Techniques such as listening to music or breathing exercises that help patients relax. This should be performed with the assistance of a behavioral therapist or hypnotist.
- *Mental imagery*. Uses mental images as a way to impact attitudes and emotions. This should also be performed with the assistance of a behavioral therapist or hypnotist.
- *Anticipatory awakenings*. The patient is awoken 15 to 20 minutes before an anticipated sleepwalking episode and kept awake for the time during which episodes occurred in the past.

Some techniques for improving sleep and possibly avoiding a sleepwalking episode include:

- Avoiding or minimizing **stress**, anxiety and conflict.
- Avoiding **alcohol** or the use of medications that suppress the central nervous system, such as **sedatives**.
- Avoiding sleep deprivation, fatigue or **insomnia**.

## Questions for your doctor about sleepwalking

Preparing questions in advance can help patients to have more meaningful discussions with their physicians regarding their conditions. Patients may wish to ask their doctor the following sleepwalking-related questions:

1. How can I tell if I (or my child) am sleepwalking?
2. Is any episode of sleepwalking of concern?
3. What is causing my (or my child's) sleepwalking?
4. Is it safe to wake someone who is sleepwalking?
5. What should I do if I cannot wake someone who is sleepwalking?
6. What is the best way for me to treat my (or my child's) sleepwalking?
7. Can sleepwalking be prevented?

Exhibit C



8. Will I (or my child) outgrow sleepwalking?
9. If I (or my child) sleepwalked once, is it likely to happen again?
10. Can sleepwalking be prevented?

This information can be found by going to http://emotional.health.ivillage.com/

Welcome to Emotional Health

Exhibit D

# Sleepwalking

## What is it?

Sleepwalking is also called "somnambulism." It is a parasomnia. A parasomnia involves undesired events that come along with sleep.

Sleepwalking occurs when you get up from bed and walk around even though you are still asleep. It can also involve a series of other complex actions. Before walking, you might sit up in bed and look around in a confused manner. At other times, individuals may bolt from the bed and walk or run away. They may be frantic to escape from a threat that they dreamed or imagined.

You might talk or shout as you are walking. Your eyes are usually open and have a confused, "glassy" look to them. You might begin doing routine daily actions that are not normally done at night.

More often, it involves actions that are crude, strange, or in the wrong place. This might include urinating in a trash can, moving furniture around, or climbing out of a window. It can also result in hostile and violent behavior.

In rare cases, a patient will get in the car and drive away. He or she might even go for a very long distance. Indecent exposure and other sexual behaviors may also occur. Adults might dream or hallucinate while they sleepwalk. Some people will eat.

It can be very hard to wake a sleepwalker up. When you do wake up, you can be very confused. This is because you normally have no memory of the event. Adults sometimes recall bits and pieces of what took place. Less often, they will have a very clear memory of all that happened.

At times, you might even attack the person who wakes you. Men, especially, are often violent during these episodes. The walking can also suddenly end by itself. This might leave the individual in a very awkward place. At other times, the individual may return to bed while still asleep. He or she will have never awakened during the event.

Sleepwalking most often occurs in the first third of a night's sleep or during other long sleep periods. This is during the slow-wave cycle of sleep. Every now and then, it can occur during a daytime nap.

Episodes can occur rarely, or very often. They can even happen multiple times a night for a few nights in a row. The main risk is injury to self, the bed partner, or others in the same home. It can also disrupt the bed partner's sleep.

Sleepwalking can usually be seen as a fairly normal part of a child's early sleep patterns. The child with calm sleepwalking may quietly walk toward a light or to the parents' bedroom.

At times, kids will walk to a window or door, or even go outside. This can put them at great risk. Older children may be more vocal and active as they sleepwalk. Children who sleepwalk will often talk in their sleep and have sleep terrors.

## Who gets it?

Sleepwalking is more common in children and affects both boys and girls. It can begin as soon as a child is able to walk. The rate of it in children is as high as 17%. It peaks by the time they are eight to 12 years old. Most children with it also had confusional arousals at a younger age.

Rarely, sleepwalking may begin at any time in the adult life, even when someone is in their seventies. Up to 4% of adults sleepwalk. In adults, men are much more likely to display aggressive behavior when they sleepwalk.

There is a strong genetic and family link to having it. Your chance of having it can double or almost triple if one or both parents had sleepwalking episodes as a child or adult.

Episodes of sleepwalking and sleep terrors share many of the same causes. These include the following:

- Sleep deprivation
- Hyperthyroidism (overproduction of thyroid hormones)
- Migraine headaches
- Head injury
- Encephalitis (brain swelling)

- Stroke
- The premenstrual period
- Bloated stomach
- Physical or emotional stress
- Obstructive sleep apnea (OSA)
- Other sleep-related disorders or events
- Travel
- Sleeping in unfamiliar surroundings
- Some medications
- Alcohol use and abuse
- Noise or light
- Fevers in children

### How do I know if I have it?

1. At times, do you get out of bed and walk around while you are still asleep?

2. Do you perform routine actions at strange times?

3. Do you perform crude or bizarre actions during these events?

4. Are any of these behaviors dangerous?

5. Are you confused after others struggle to wake you?

6. Is it hard for you to remember what took place?

If your answer to the first question and at least one of the others is yes, then you might have the sleepwalking disorder.

It is also important to know if there is something else that is causing your sleep problems. They may be a result of one of the following:

- Another sleep disorder
- A medical condition
- Medication use
- A mental health disorder
- Substance abuse

### Do I need to see a sleep specialist?

Sleepwalking in children is fairly normal. It does not usually need medical treatment. Parents should simply keep a close watch on their child. An adult who continues or begins to sleepwalk is at a greater risk of injury. In this case, it would be a good idea to seek a doctor's advice.

### What will the doctor need to know?

You should complete a sleep diary for two weeks. This will give the doctor clues as to what might be causing your problems. You can also rate your sleep with the Epworth Sleepiness Scale. This will help show how your sleep is affecting your daily life.

The doctor will need to know your complete medical history. Be sure to inform him or her of any past or present drug and medication use. Also tell the doctor if you have ever had any other sleep disorder.

### Will I need to take any tests?

Your doctor will likely have you do an overnight sleep study if you are an adult. This is called a polysomnogram. The polysomnogram charts your brain waves, heart beat, and breathing as you sleep. It also records how your arms and legs move. This shows if there are other disorders, such as sleep apnea, that are causing your sleep problems.

The best sleep study will also record your sleep on video. This will help show if you get out of the bed and do anything unusual during the study.

### How is it treated?

For children, it tends to go away on its own as they enter the teen years.

Sleepwalking can occur when sleep is fragmented by other sleeping problems. Obstructive sleep apnea (OSA) is a common medical problem that can lead to frequent arousals from sleep. This may increase the risk of parasomnias such as sleepwalking. Symptoms of OSA include snoring, waking up gasping for air, and daytime sleepiness. Treatment of OSA may improve sleepwalking.

**Reviewed by David Kuhlmann, MD**
*Updated August 31, 2007*

**More Information**

Preventing Parasomnias

Comparing Child Parasomnias

**Tips for Parents**

Sleepwalking is a parasomnia that is very common in children. Although it usually is harmless, your child can be at risk of an injury. These tips will help you keep a sleepwalking child safe:

- Calmly help your child return to bed during a sleepwalking episode.
- Tie a bell to your child's doorknob to alert you when the door is opened.
- If your child sleeps upstairs, install a safety gate at the top of the stairs.
- Make sure that all windows in the house are locked securely.
- Install locks out of your child's reach on all doors that lead out of the house.
- If episodes occur regularly at the same time of night, briefly wake your child just before that time.

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Exhibit E

# Medical Encyclopedia: Sleep walking

URL of this page: http://www.nlm.nih.gov/medlineplus/ency/article/000808.htm

**Alternative names**

Walking during sleep; Somnambulism

**Definition**

Sleep walking is a disorder that occurs when a person walks or does another activity while they are still asleep.

**Causes, incidence, and risk factors**

The normal sleep cycle has distinct stages, from light drowsiness to deep sleep. During rapid eye movement (REM) sleep, the eyes move quickly and vivid dreaming is most common.

Each night people go through several cycles of non-REM and REM sleep. Sleep walking (somnambulism) most often occurs during deep, non-REM sleep (stage 3 or stage 4 sleep) early in the night. If it occurs during REM sleep, it is part of REM behavior disorder and tends to happen near morning.

The cause of sleep walking in children is usually unknown but may have to do with fatigue, lack of sleep, or anxiety. Sleep walking in adults can have to do with mental disorders, reactions to drugs and alcohol, or medical conditions such as partial complex seizures. In the elderly, sleep walking may be a symptom of an organic brain syndrome or REM behavior disorders.

When someone sleep walks, they may sit up and look as though they are awake while they are actually asleep. They may get up and walk around, or do complex activities such as moving furniture, going to the bathroom, and dressing and undressing. Some people even drive a car while they are asleep. The episode can be very brief (a few seconds or minutes) or can last for 30 minutes or longer.

Some people mistakenly believe that a sleep walker should not be awakened. It is not dangerous to awaken a sleep walker, although it is common for the person to be confused or disoriented for a short time when they wake up. Another misconception is that a person cannot be injured when sleep walking. Actually, sleep walkers are commonly injured by tripping and losing balance.

Sleep walking can occur at any age, but it happens most often in children aged 4 - 8. It appears to run in families.

**Symptoms**

- Eyes open during sleep
- May have blank look on face
- May sit up and appear awake during sleep
- Walking during sleep
- Other detailed activity of any type during sleep
- Not remembering the sleep walking episode upon awakening

Exhibit E

- Confused, disoriented upon awakening
- Sleep talking does not make sense

**Signs and tests**

Usually, people won't need further examinations and testing. If the sleep walking occurs often, the doctor may do an exam to rule out other disorders (such as partial complex seizures). If you have a history of emotional problems, you also may need to have a psychological evaluation to look for causes such as excessive anxiety or stress. Or, you may need to have a medical exam to rule out other causes.

**Treatment**

Most people don't need any specific treatment for sleep walking.

Safety measures may be needed to prevent injury. This may include changing the area by moving objects such as electrical cords or furniture to reduce the chances of tripping and falling. You may need to block off stairways with a gate.

In some cases, short-acting tranquilizers have been helpful in reducing sleep walking episodes.

**Expectations (prognosis)**

Sleep walking may or may not reduce with age. It usually does not indicate a serious disorder, although it can be a symptom of other disorders.

**Complications**

A complication is getting injured while sleep walking.

**Calling your health care provider**

You probably won't need to visit your health care provider if you are sleep walking. However, discuss the condition with your doctor if:

- You also have other symptoms
- Sleep walking is frequent or persistent
- You perform potentially dangerous activities (such as driving) while sleep walking

**Prevention**

- Avoid the use of alcohol or central nervous system depressants if you sleep walk.
- Avoid getting too tired and try to prevent insomnia, because this can trigger a sleep walking episode.
- Avoid or minimize stress, anxiety, and conflict, which can worsen the condition.

**Update Date: 6/4/2007**

Updated by: Allen J. Blaivas, D.O., Pulmonary, Critical Care, and Sleep Medicine, Department of Veteran Affairs, VA System, East Orange, NJ. Review provided by VeriMed Healthcare Network.

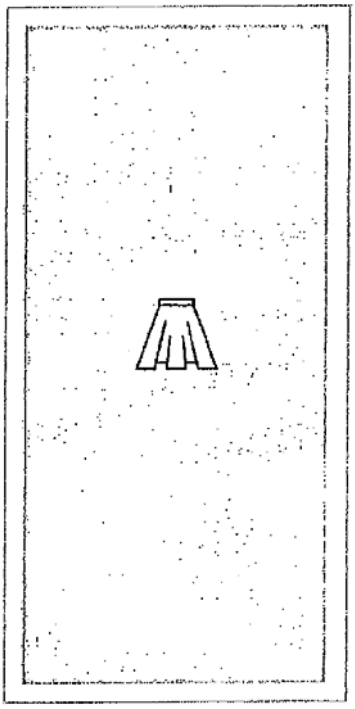
Exhibit F



# When Can Killers Claim Sleepwalking As a Legal Defense?

By JANE E. BRODY
Published: January 10, 1995





IT is the stuff of television movies and pulp fiction:

A 16-year-old Kentucky girl, dreaming that burglars were breaking into her home and murdering her family, got up in her sleep, picked up two revolvers and fired into the dark house, killing her father and 6-year-old brother and injuring her horrified and bewildered mother.

A vacationing detective, recovering from a nervous breakdown, called upon to help solve a seemingly motiveless murder of a bather on a beach in France, realized after finding prints in the sand made by a stockinged foot that was missing a toe that he himself was the perpetrator, having shot the man with his pistol while walking in his sleep.

A 23-year-old Toronto man with a wife and infant daughter, suffering from severe insomnia caused by joblessness and gambling debts, arose in the night and, still asleep, got in his car and drove 14 miles to his in-law's home. He stabbed to death his mother-in-law, whom he loved and who called him "a gentle giant," and tried to kill his father-in-law. He then drove to the police and said "I think I have killed some people . . . my hands," only then realizing he had severely cut his own hands.

Were they legally culpable for their actions? Is someone who kills in his sleep guilty of murder? Perhaps not. The 16-year-old girl and the 23-year-old man were acquitted. The fate of the French detective is not known. And in the current issue of the journal Sleep, which is devoted to the subject of sleep-related violence, Dr. Meir Kryger, director of the Sleep Disorders Center at the St. Boniface Hospital-Research Center in Winnipeg, Canada, wrote, "The potential for sleep disorders to become the 'Twinkie' defense of the 21st century is frightening."

Dr. Kryger said in an interview that in an increasing number of violent crimes, defendants are contending that they were asleep at the time and therefore not accountable for their actions.

But if a sleep problem is established, said Dr. Clete A. Kushida of the Stanford University Sleep Disorders Clinic, "the courts and the public have to accept that it's a disease like any other disease."

Dr. Kryger added, "In my opinion, a person who commits a violent crime while asleep should not be held responsible for the act, but that person cannot be returned to society without treatment."

These three cases are among the more dramatic examples of a phenomenon known as sleep-related violence, in which part of the brain wakes up enough to allow the person to perform complex acts while the rest of the brain remains unconscious with sleep. To sleep specialists and increasingly to the law, it is called "noninsane automatism" -- an act done by a sane person but without intent, awareness or malice. The person who commits the act is typically horrified by what has happened and has no memory of having done it.

Some sleepers have strangled wives they seem to have loved, some have thrown their

Exhibit F

children out of windows, and some -- with eyes open but conscious minds asleep -- have driven cars and killed pedestrians or people in other vehicles. Still others have seriously injured themselves by walking through upper-story windows or plate-glass doors.

Despite a few dramatic cases of sleep-related violence that have come to trial, doctors in this country remain largely unaware of the potential dangers of sleep disorders. Millions of Americans have these sleep disorders, though only a small percentage become violent. When such sleep disorders are finally brought to medical attention, patients are often told that they have an emotional problem and are referred for psychotherapy to unearth some unconscious reason for their bizarre behavior.

But psychiatrists and neurologists who specialize in sleep problems insist that most of the disorders that lead to sleep-related aggressive acts are not a result of underlying mental illness. Although severe stress, like having survived a traumatic event, can sometimes trigger the expression of underlying sleep problems, their fundamental cause is a physiological or neurological aberration that disrupts the normal behavior of the brain during sleep and results in partial and often confused arousals.

Researchers have found that the disorders that lead to sleep-related violence can usually be treated effectively with one or more medications, including antiseizure drugs and tranquilizers, that "quiet" the overly active parts of the brain and help to prevent partial arousals during sleep. Patients may also receive counseling to relieve stresses that contribute to their sleep disturbance.

One type of problem, REM sleep behavior disorder, which most often affects men over 60, is especially hazardous because it allows people to act out their dreams while still asleep and thus removed from conscious controls and inhibitions, said Dr. Mark W. Mahowald, who first described this phenomenon in 1986. Normally, during REM, or dream sleep, motor functions are paralyzed, said Dr. Mahowald, a neurologist with the Minnesota Sleep Disorders Center at Hennepin County Medical Center in Minneapolis. The eye muscles, diaphragm and heart continue to function, but people cannot walk, talk or thrash about, he said.

But when a person with the REM disorder is dreaming, all the muscles can continue to work, which would allow a man dreaming about an intruder to bludgeon his sleeping spouse, or a woman dreaming her house is on fire to toss her children from the window.

Somewhat better known are disorders like sleepwalking and night terrors that occur during non-REM sleep -- typically the deeper stages of sleep known as slow-wave sleep, stages 3 and 4. Children and adults who sleepwalk or who emit blood-curdling screams, sweat profusely and appear terrified in the course of a night terror are not dreaming.

In the journal, Dr. Carlos H. Schenck, a psychiatrist at the Minnesota center, tells of a 43-year-old man with a non-REM disorder, sleepwalking. The man, he said, "had injured his wife on many occasions by punching her and had once attempted to strangle her." He had also broken his fingers punching hard objects, injured his knees and ankles when he collided with doorways and furniture or fell down the stairs while walking in his sleep. When the problem was finally brought to medical attention, it was found to be longstanding. The man had begun sleepwalking at the age of 5, often jumping from his bed and running around the house. At 25, while in pajamas and believing that someone was in the house and about to attack him, he got in his car and, still asleep, drove five miles to his parents' home. During his 15-year marriage, near-nightly sleep episodes included once flinging his wife into the air, then dropping her onto a hardwood floor.

Yet various tests revealed no psychiatric disorder or history of alcohol or substance abuse. During the day, the man had a stable and enjoyable marriage and family life with four children. But when the Minnesota Sleep Center hooked him up for

Exhibit F

polysomnography, which includes recording of brain waves and muscle action, all sorts of violent incidents would occur. He would sit up rapidly, look about in confusion, talk, throw punches and try to leave the bed, all while his brain recording showed he was still asleep. At last report he had been effectively treated for more than five years with bedtime doses of a Valium-like drug, clonazepam.

Most people who sleepwalk or suffer night terrors, which afflict about 1 percent of the adult population, do not become violent. In trying to determine who might strike out dangerously during sleep, Dr. Harvey Moldofsky and colleagues at the University of Toronto Center for Sleep and Chronobiology examined 64 consecutive patients who visited their clinic. The 26 who had committed serious violent acts, harming property, themselves or other people, were more likely to be men -- only three were women -- with disordered sleep schedules, like those who do shift work. They were also more likely than the nonviolent group to have experienced recent distressing events and to consume a lot of caffeine and to use other drugs that could further disrupt their sleep. Finally, they demonstrated a reduced ability to wake up because of disturbances in their deep sleep stages.

Two well-recognized physical ailments, sleep apnea and epilepsy, can sometimes result in sleep-related violence and have been used by defendants who said they had no recollection of committing their sleep-related crimes. Sleep apnea, in which patients stop breathing during sleep and then suddenly resume breathing with a raucous snort-like snore, can result in hundreds of confused, partial arousals during the night. Occasionally, sleepwalking may accompany these partial arousals, according to Dr. Christian Guilleminault, who established the Stanford sleep center and edits the Sleep journal.

But Dr. Eric A. Nofzinger, a psychiatrist at the Sleep and Chronobiology Center at the University of Pittsburgh, said that great care must be taken to prevent sleep apnea or epilepsy -- or any sleep disorder, for that matter -- from becoming a "Twinkie defense."

He cited a case that occurred two years ago in Butler, Pa. A 37-year-old man fatally shot his wife and contended that he remembered nothing about the incident, which he said must have occurred during a confused arousal precipitated by his severe sleep apnea. The jury rejected this defense and found him guilty of first-degree murder, partly because the man had a history of violence toward his wife during waking hours and partly because he showed no remorse over her death when the police arrived.

In a contrasting case, a man with severe sleep apnea and night terrors who murdered his wife was ultimately acquitted. As recalled by Dr. Moldofsky, one night the man, who had an apparently tranquil marriage, chased his wife into the street, stabbed her repeatedly and finally smashed her head on the pavement, all the while easily brushing off neighbors who tried to stop him. The man then fell asleep in his car and when he awakened seemed very confused and said he could not recall the incident. Although twice convicted by juries, the man successfully appealed both convictions.

Dr. Nofzinger said that for noninsane automatism to be used as a legal defense, the defendant should have a history of a sleep disorder, particularly one that has previously involved aggressive or dangerous acts that are inconsistent with the person's daytime behavior.

In the best of cases, instances of aggressive or violent acts during sleep can be documented during nights spent in a sleep laboratory, although the disorders may not occur frequently enough to make this practical. It also helps, Dr. Moldofsky said, if the defendant had no motive for committing the crime.

"Although it is quite accepted by society when someone harms himself during sleep," he said, "when it comes to harming others, people very often cannot believe the act could

Exhibit F

take place without the person being aware of what was happening. They have difficulty believing a person could remain asleep through such violent acts."

Yet Dr. Moldofsky described three nonpsychotic men who were charged by the police with assaultive behavior that occurred during sleep this way: "They appeared as automatons, unaware of what they were doing and unresponsive to stimuli from their environment. Their strength was extraordinary, and their violence was involuntary and inconsistent with the reality of the situation. After returning to sleep and then awakening on the following day, they were amnesic for the event. They subsequently harbored intense guilt, remorse and fear of recurrences of such dangerous behavior."

Tomorrow in Personal Health: Coping with sleep disorders.

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