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## *Acknowledgements*

The Justice Education Society is grateful to the developers of this mock trial, Judge Cunliffe Barnett and Sandra Hawkins, for their permission to adapt the script for publication in this form.

The Society has several first-class resource materials, including other mock trials and Guide to Mock Trials: The Basics, that can help you and your group learn more about the courts and the justice system in British Columbia and Canada. For more information, contact us or visit our web site:

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ISBN 0-7726 – 7487 – 6

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## *Preface*

This script was originally originally developed to be produced by Columneetza Senior Secondary School Law 12 and PACE 12 students in Williams Lake during Law Week, 1993. The script is based upon an actual case of Kenneth Parks, which made Canadian legal history when sleepwalking was raised as a defence to murder (R.v. Kenneth James Parks, [1992] 2 S.C.R. 871)

This is an advanced mock trial. It is produced for senior students who have some mock trial experience and who are ready for a new challenge. The trial demands that participants familiarize themselves with the responsibilities of various court personnel, and with the deeper issues raised by the case. For example, the students who play Crown and defence counsel should meet with local lawyers to discuss the case.

The role sheets included here are designed to be used in conjunction with the “*Guide to Mock Trials: The Basics.*”

You can modify this trial for your own use. For example, you may want to make the dates current, change the names of the characters, and modify the location for local relevance. The students involved in the trial can take part in the modification process, and you can incorporate appropriate suggestions.

In preparing for this mock trial, students are encouraged to focus on the difficult and controversial legal issues arising from the case. By way of preparation, they will need to read June Callwood’s novel, “*The Sleepwalker,*” which is based on the Parks case.

A few words of caution – the events portrayed in the script are violently unpleasant. The roles of some participants require the use of some coarse language. These features are not meant to offend; they are simply necessary to create a realistic scenario for the instruction of and use by senior students.

*Judge C.C. Barnett*

Sandra Hawkins

# *Getting Started*

In **Regina v Hudson**, Michael Hudson is charged with first-degree murder of his mother-in-law, Margaret Willis. His defence is that he was sleep walking when he knifed her.

The witness role sheets in this guide are designed to be used in conjunction with the companion publication, “*Guide to Mock Trials: The Basics.*” The generic guide is available from the Justice Education Society.

This mock trial has the following witness roles:

## **For the Crown:**

Constable Kramer

Jack Willis

Dr. D. Mondale

## **For the Defence:**

Michael Hudson  
Shelagh Hudson

Sadie Jablonski

Dr. J. Tyrone

Students should be warned that counsel **must not** ask questions in direct or cross examination that will get the witness into areas not outlined in the role sheets. Students are expected to develop the roles but to keep them within the framework outlined in the role sheets.

## **Exhibits**

- #1 Photograph of Willis Home
- #2 Photograph of hallway where Mr. Willis was found
- #3 Photograph of the body of Mrs. Willis
- #4 Knife seized at the scene
- #5 Photograph of the tire iron found in Hudson’s vehicle
- #6 Tire iron seized from Hudson’s vehicle

## *Materials for the Participants*

**Crown and defence counsel** need:

- ◆ all the witness role sheets
- ◆ the indictment, and notes for counsel
- ◆ judge's charge to the jury
- ◆ section 235 (1) of the Criminal Code
- ◆ Crown and defence files from "*Guide to Mock Trials: The Basics*"

Crown and defence should each meet with a lawyer to discuss the details of this case.

**The Judge** needs:

- ◆ all the witness role sheets
- ◆ the indictment, and notes for counsel
- ◆ judge's charge to the jury
- ◆ judge's file from "*Guide to Mock Trials: The Basics*"
- ◆ section 235(1) of the Criminal Code

The judge should meet with a local member of the judiciary, if possible, to discuss the case.

**The court clerk** needs:

- ◆ the indictment
- ◆ copies of section 235(1) of the Criminal Code to hand to the jury when the judge has charged them
- ◆ exhibits 1 to 6
- ◆ court clerk's file from "*Guide to Mock Trials: The Basics*"

# *Indictment*

CANADA  
PROVINCE OF BRITISH COLUMBIA  
SUPERIOR COURT OF BRITISH COLUMBIA

IN THE SUPERIOR COURT OF BRITISH COLUMBIA  
HER MAJESTY THE QUEEN  
AGAINST MICHAEL HUDSON

Michael Hudson stands charged:

THAT you, Michael Hudson, on or about the 12<sup>th</sup> day of September, A.D. 1992 at or near the City of Williams Lake, in the Province of British Columbia, did commit first degree murder on the person of Margaret Wills CONTRARY TO SECTION 235 (1) OF THE CRIMINAL CODE OF CANADA AND AGAINST THE PEACE OF OUR LADY THE QUEEN, HER CROWN AND DIGNITY.

DATED this 22<sup>nd</sup> day of March, A.D., 1993, at the City of Williams Lake, in the Province of British Columbia.

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Agent of the Attorney General for the  
Province of British Columbia

## *Notes for Counsel*

Note: Counsel should incorporate these ideas into their closing submissions. For details on how to construct the opening statement and closing submission, students should refer to the Crown and Defence files in “*Guide to Mock Trials: The Basics*.”

### **Defence Submissions**

Your case rests upon the most fundamental principle of our criminal law: only those persons who act voluntarily and with wrongful intent should be punished as criminals.

You will say that the evidence clearly proves that your client loved his in-laws. He did not have any conscious intention to harm them. It is, you will say, preposterous for the Crown to suggest that he murdered Margaret Willis.

You will say that your client is not insane and therefore the jury must not return a verdict of criminally responsible on account of mental disorder.

Your position is that the jury must find Michael Hudson not guilty. He must be acquitted. You will say the jury must not be reluctant to do their duty. The evidence is clear. Michael Hudson’s unusual condition can be treated quite simply on an outpatient basis and it is extremely unlikely he will ever suffer another similar episode.

You must not question the fact that your client did kill Margaret Willis and you must not in any way suggest that she caused or provoked what happened.

### **Crown Submissions**

You will say that this is really a very straightforward case, which essentially calls upon the jury to exercise their collective common sense. They must not be fooled by Dr. Tyrone’s fanciful medical theories.

You will tell the jury that while they may not understand exactly why Michael Hudson meant to inflict murderous harm upon his in-laws, he clearly did intend to do that. There is no other reasonable explanation for his actions. Your submission is that Michael Hudson is guilty of first-degree murder.

Your alternative submission is that if the jurors are persuaded that Hudson was sleepwalking when he killed Margaret Wills, he was suffering from a mental disorder and is therefore not criminally responsible. You will say that Hudson is obviously a dangerous man and it is unthinkable that the jury would acquit him and turn him loose. He needs to be confined – if not in a jail cell, then in a hospital for the criminally insane.

## ***Crown Witness # 1 – Constable Kramer***

You are a member of the Williams Lake R.C.M.P. On September 12, 1992, you were on duty at the detachment at 1:29 a.m. A man, whom you know as Michael Hudson, arrived and began banging on the door. You responded and immediately upon your opening the door, Hudson blurted out:

I just killed someone with my bare hands; Oh my God, I just killed someone; I've just killed two people; My God. I've just killed two people with my hands; My God, I've just killed two people. My hands; I've just killed two people. I killed them; I just killed two people; I've just killed my mother-and father-in-law. I stabbed and beat them to death. It's all my fault.

You asked Hudson where this had happened and he described the location of his in-laws' home near the intersection of Westcoast Road and Pinewood Place.

You turned Hudson over to an auxiliary constable and directed him to call an ambulance.

You observed that Hudson was covered in blood and extremely agitated. You did not detect any sign that Hudson had been drinking.

You immediately drove to the place described to you by Hudson. It is a mobile home located upon a small acreage. (Exhibit 1 is a photograph of the home taken by you later in the morning of September 12, 1992.)

Upon entering the home your worst fears were realized. Looking down the hallway you immediately saw Mr. Jack Willis on the floor covered in blood and moaning softly. When you went to where he was and looked into the bedroom, you could see Mrs. Willis. She was dead, having suffered many stab wounds.

After the ambulance attendants had taken Mr. Willis away, you took photographs in the home. (Exhibit 2 shows the hallway scene after removal of Mr. Willis and Exhibit 3 shows the body of Mrs. Willis. A large kitchen knife is visible in this photograph. You seized the knife. It is Exhibit 4.)

You then returned to the R.C.M.P. detachment. Michael Hudson's pickup truck was parked outside the detachment still. You opened the driver's door and then observed a tire iron on the floor of the cab. (Exhibit 5 is a photograph of the truck cab with the tire iron clearly visible and Exhibit 6 is the tire iron, which you seized.)

Later in the day on September 12, 1992, you drove from the Willis home to the house of Michael Hudson in the Mountview Mobile Home Park. This distance is exactly 20.4 km.

On cross-examination you will agree that Michael Hudson was crying and expressing suicidal thoughts when you talked to him. You will also recall that when you asked him why he had killed his in-laws, he seemed unable to answer. You will say that he seemed horrified and remorseful. He was totally co-operative with you.

## ***Crown Witness #2 – Jack Willis***

You are 45 years old, the father of Michael Hudson's wife, and one of his victims. He killed your wife, Margaret.

You have known Michael for about five years. He started dating your daughter, Shelagh, when the two of them were Grade 12 students at Columneetza Senior Secondary School. In those days Shelagh was a wild and rebellious girl who did far too much reckless partying. You and Margaret always liked Michael, particularly because Shelagh settled down so nicely after she started going out with Michael. You will recall that you gave Michael a key to your home a few years ago.

You will recall that you and Margaret knew that Michael had been fired from his job and was facing criminal charges. Shelagh had told you these things but had made you promise not to divulge your knowledge to Michael.

You will recall that you and Margaret went to bed at a normal hour on Friday, September 11, 1992. Your memory of events after that is very limited. You have some recollection of being awakened by screams and realizing that Michael was in your bedroom. He was shouting angry words and you were struck with something. Your next memories follow your awakening in Caribou Memorial Hospital. You were in an oxygen tent, hooked up to all sorts of machines, bottles, etc. The doctor told you that Margaret was dead.

You suffered a fractured skull, a broken arm, and other lesser injuries. Your hearing and vision are still not good. Your arm is still weak

You will identify Exhibit 4: it is one of Margaret's kitchen knives.

You have not spoken to Michael since it happened. You will never speak to him again. You can never forgive him.

You are speaking to Shelagh again, but it is very difficult.

On cross-examination, you will agree that you know Michael to be a gentleman. You never ever heard him raise his voice in anger. He was always kind to Shelagh and never forgot Margaret's birthdays.

On cross-examination you will also agree that, to the best of your knowledge, Michael never drank alcohol or did drugs. You thought that was very remarkable.

On cross-examination, you will also agree that you are making a good recovery from your injuries, or so the doctor tells you. (But when you leave the witness stand you will make it very obvious that you need to use a cane.)

## ***Defence Witness #1 – Michael Hudson***

You are 23. You grew up in Williams Lake. You began working for the Williams Lake Ranch & Mill Supply Company part time and during the summer when you were in Grade 11. After graduation the job became full time and about a year ago you were promoted to shop manager.

You married Shelagh three years ago. She used to work at a bank but took a leave of absence when your baby was born in June 1992.

You and Shelagh are buying your own mobile home.

You will say that things seemed to start going wrong in your life while Shelagh was pregnant. You started buying lottery tickets – mainly Sports Action and 6/49 – and you won a couple of early prizes. So you started buying more lottery tickets. It quickly became a compulsion, which took a lot of time and cost a lot of money. After draining your family bank account, you began taking money at work. You believed that you were perfecting a system and would soon win big. But you were caught, fired and charged with stealing \$ 30,000.

Those events were very upsetting to Shelagh but she was somewhat forgiving when you told her you had found another job and that your lawyer said the judge would give you an absolute discharge in court. But you had lied to Shelagh. The truth was that you had no new job and had really been spending your days buying more lotteries tickets. You had been telling yourself that you could repay the \$ 30,000 when you went to court on Monday, September 14, and also return the money you had taken from Shelagh's savings account by forging her name.

You will recall that Shelagh had discovered your lies on Friday, September 11. There was a long and angry confrontation that evening. Shelagh had said that she intended to leave and divorce you but she finally relented after you cried a lot, promised never to lie to her again, and agreed to her demand that you accompany her the next day to make a full confession to her parents and your mother. Shelagh had gone to bed alone about 10 p.m. You remained in the living room and started watching a video.

You were totally straight and sober. You do not do drugs or drink.

You will say that you must have drifted off and gone to sleep.

You will say that you have no memory of waking up or driving to the home of Shelagh's parents. You will say that you have no memory of hurting Shelagh's parents. You will say that you have some vague memory of being in the home, seeing that Shelagh's mother had a sad face, and that you do remember being at the R.C.M.P detachment and telling a police officer that you had done something terrible.

You will be asked about your childhood. You will recall that it was generally happy. You will recall (with much embarrassment) that you were a bed wetter even into your teenage years and that your mother sometimes used to find you wandering around at night when you were supposed to be asleep. She would wake you up and take you back to bed. But you were a boy when such things happened, and you do not remember them very well.

On cross-examination you will recall that the video you were watching that night was "*Bugsy*," and you will agree that it is a violent movie. But you will not agree when Crown counsel suggests that you have fantasized about violence for many years, but kept those fantasies to yourself.

On cross-examination you will agree that the tire iron is yours. You will say that you do not remember ever seeing the kitchen knife.

On cross-examination Crown counsel will ask you if you want the jury to believe that you drove all the way to the Willis home and committed acts of murderous violence there when you were asleep. You will reply to the effect that you do not know, but that is what the doctors told you.

## ***Defence Witness #2 – Shelagh Hudson***

Yours is a small but important role.

You are Michael's wife.

You do not really have much to say about the case. But you must make it clear that you take your marriage very seriously and are standing beside your husband in spite of the difficult situation it has created with your side of the family.

On cross-examination you will deny that Michael was angry when you went to bed on September 11. You will agree that you never saw Michael sleepwalking during the years that you have known and been sleeping with him.

## ***Defence Witness #3 – Sadie Jablonski***

Yours is a small but important role.

You are 40 years old. You are Michael's mother. You have had a hard life.

Your common-law husband, Joe Hudson, is dead now. He was a good man in the woods but life was not easy with him. He used to drink a lot and he would often get up at night and go sleepwalking.

Michael is your oldest child. When he was a boy he used to be a bed wetter and go sleepwalking. Your other children did these things also.

On cross-examination you will agree that your husband never hurt you or anybody else while he was sleepwalking. But you will emphasize in your uneducated folksy way that he did some strange things.

## *Defence Witness #4 – Dr. J. Tyrone*

You are a neurophysiologist, a professor in the faculty of medicine at U.B.C., and a specialist in sleep disorders. You were a founding member of the Canadian Sleep Society; you established the sleep disorders centre at the University Hospital in Vancouver; and you have written many learned articles on sleep disorders.

You were asked by his lawyers to assess Michael Hudson. You have interviewed him extensively and have performed or supervised many clinical tests.

You were initially very skeptical when it was suggested that Michael Hudson might have been sleepwalking when he attacked Margaret and Jack Willis. But you have concluded that he indeed was. The following factors are considered by you to be most important.

1. Neurological tests (EEG and CAT scan) indicate that Michael Hudson's brain is perfectly normal. He does not suffer from epilepsy or any form of psychosis.
2. Michael Hudson's sleep patterns are most unusual for an adult. He spends long periods of time in deep sleep, he awakens abruptly, and his sleep is fragmented by repeated brief awakenings. This pattern of sleep somewhat resembles that of a child and indicates a person who is predisposed to sleepwalking.
3. When Michael Hudson attacked Margaret and Jack Willis, he was under extreme stress and suffering from exhaustion and sleep deprivation.
4. Michael Hudson's childhood and family history of bedwetting and sleepwalking is very important. It reveals a genetic predisposition to sleepwalking.

You will state that it is your professional opinion that Michael Hudson's sleepwalking is not an illness or disease – whether physical, mental or neurological.

You will state that Michael Hudson's attack upon Margaret and Jack Willis was an unconscious activity. It was not planned while he was awake.

You will state that is extremely unlikely that Michael Hudson will ever repeat this sort of behaviour. His condition can be effectively treated by simple methods. He needs to learn good sleep hygiene.

You will maintain and further explain your opinions during cross-examination when it will be suggested that it is not plausible that a man could remain asleep while driving a great distance, entering a house, obtaining weapons, and committing such savage attacks.

This is a major role. It will require a great deal of careful preparation. You must read June Callwood's book, "The Sleepwalker," and you must do other reading and research.

## ***Crown Witness #3 – Dr. D. Mondale***

You will be called as a rebuttal witness.

You are a forensic psychiatrist. You have many years of experience assessing persons who have committed acts of violence and treating persons who behaved violently while suffering various forms of mental illness. You are an associate of the Canadian Institute of Forensic Psychiatry and the author of a textbook, which is used in medical schools in many countries

You were asked by Crown counsel to interview and assess Michael Hudson. You have also had the benefit of reading Dr. Tyrone's reports and listening to his or her testimony.

You will state that you do not agree with Dr. Tyrone's opinions.

You do not believe that Michael Hudson was sleepwalking at all when he attacked Margaret and Jack Willis. You will state that it is very rare for sleepwalkers to behave violently. You will state that the most likely explanation is that he was in a hysterical dissociating state. You believe that he was overwhelmed by his emotions and therefore his brain worked in a different way. A person in such a state can do things which he later does not recall, but he is not crazy or unconscious.

You will further state that if Michael Hudson was sleepwalking when he attacked Margaret and Jack Willis, it is your professional opinion that he was an abnormal and pathological brain condition which can, as has been demonstrated, cause violent behaviour. You further believe that such behaviour could recur unless he is treated. You believe that treatment should be given in a hospital setting.

On cross-examination you will agree that Michael Hudson is not mentally ill or crazy in the usual sense: he does not suffer from any form of psychosis. But you will insist that you are very concerned that if he does not get proper treatment, it could happen again.

This is a major role. It will require a great deal of careful preparation. You must read June Callwood's book, "The Sleepwalker," and you must do other reading and research.

## ***Judge's Role – Charge to the Jury***

You can develop your opening statement to the jury by using the Judge's File in "*Guide to Mock Trials: The Basics.*"

For your charge to the jury, you can draw upon the following statement:

Mr./Madam Foreman, ladies and gentlemen of the jury, it is now my duty to give you certain instructions before you begins your deliberations.

We have separate responsibilities in this case. It is my responsibility to instruct you concerning the legal principles you must consider during your deliberations. You must accept my statement defining and explaining the law. It is your collective responsibility to assess the events that gave rise to the charge against Michael Hudson and to decide what happened. You are not obliged to accept the submissions of counsel or my own observations concerning the facts of this case.

There is a fundamental principle, which you must understand and always recall during your deliberations. In Canada, when a person is accused of criminal wrongdoing, he or she does not have to prove innocence. It is the task of the prosecution to prove guilt beyond all reasonable doubt. If the evidence before you does not go that far, Mr. Hudson is entitled to be acquitted or, possibly, to be found not guilty of murder, but guilty of the lesser offence of manslaughter.

The evidence in this case, like the evidence in almost every case, was, at times, surprising, conflicting and confusing. It is your task to sort through the testimony of the various witnesses. You will use common sense and the wisdom that experience has taught you during your own lives. You may accept all or most of the testimony given by some witnesses. You may reject all or most of the testimony given by other witnesses. You may decide that some witnesses were honest, observed well, and recalled the events accurately. You may feel that other witnesses were untruthful or that their testimony cannot safely be relied upon for any number of reasons.

I am required to review those areas of the evidence, which may be particularly important to your deliberations.

We know that Michael Hudson killed Margaret Willis. He admits that he did that.

Michael Hudson's defence to the charge of murder is founded on a fundamental principle of our criminal law: it was correctly stated by counsel for Michael Hudson when he/she said that in Canada we only convict and punish as criminals persons who have acted voluntarily and with wrongful intent.

If you are convinced that the actions of Michael Hudson were planned and deliberate, then you will find him guilty of murder. That, of course, is the result that Crown counsel says you should reach in this case. But I must emphasize that you cannot find Michael Hudson guilty of murder unless you are convinced that his actions were planned and deliberate.

If you do not find that the Crown has proved Michael Hudson guilty of murder, then you must grapple with the very difficult issues concerning his mental health. You must then decide whether he is to be found not criminally responsible because of a mental disorder or whether he must be acquitted.

I believe it is quite clear from the evidence that Michael Hudson is not insane in the usual sense. He does not suffer from schizophrenia or some other psychotic illness. You would not call him crazy. Dr. Tyrone says that Michael Hudson has a mere sleep disorder

As a matter of law, I must instruct you that if you decide Michael Hudson was not guilty of murder, you must acquit him unless the Crown has proved to you that Michael Hudson was insane in a legal sense when he killed Margaret Willis.

The medical evidence in this case is undeniably important. But because medical science is imprecise and uncertain in this area, the law reserves for itself the final determination. The medical and legal definitions of insanity do not always coincide.

There are no simple formulas to guide you in this case. But I suggest that when you are deliberating, you will wish to consider:

1. Were Michael Hudson's actions those of a sleepwalker, as that condition is generally understood?
2. Is Michael Hudson merely "faking it" to avoid an otherwise certain conviction?
3. Is Michael Hudson's condition a continuing danger? Must society be protected against the possibility of recurring dangerous conduct?

If you decide that Michael Hudson was suffering from a condition, which must, for legal purposes, be termed a disease of the mind, you will find him not criminally responsible. But if you do not find he suffered from any such condition, then you must acquit him.

There are only three possible verdicts in this case:

1. You may find Michael Hudson guilty of first-degree murder.

2. You may find Michael Hudson not criminally responsible because he was suffering from a mental disorder when he killed Margaret Willis.
  
3. You may acquit Michael Hudson.

Ladies and gentlemen, you may now retire and begin your deliberations. You may wish to take the exhibits with you into the jury room.

*CAUTION: This “charge to the jury” was prepared for use during a mock trial only. It is necessarily abbreviated and simplified. It is not intended that any person should presume that the law is stated definitively here.*

