



Forensic Feuds: A case study of controversial science within the Criminal Justice System

Geth Rees

Research funded by



Introduction

- Expert Evidence Admissibility Rules
 - Reliability Tests
 - Criminal Practice Directions Section V Evidence 33A
- Violent Parasomnias
- Alcohol Provocation Controversy
 - Alcohol as trigger for violent parasomnia
 - *Lowe* (2005)
 - *Bilton* (2005)
 - Alcohol provocation not science
 - *Thompson* (2012)
- Should alcohol provocation be admissible?



Expert Evidence Admissibility Rules

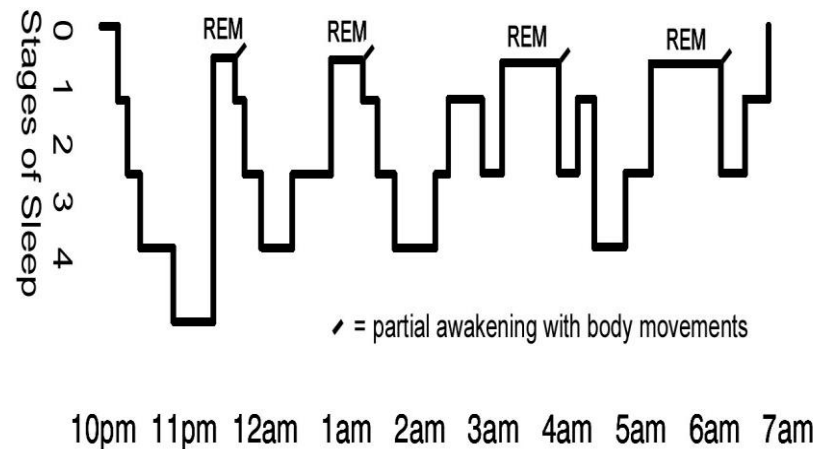
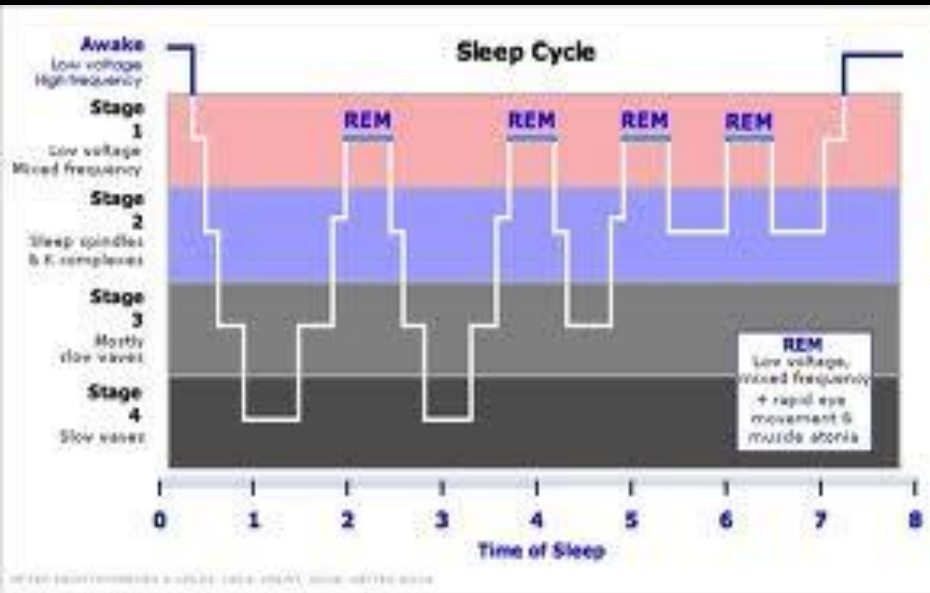
- Expert's duty to the court:
 - 1) An expert must help the court to achieve the overriding objective by giving **objective, unbiased** opinion on matters within his expertise.
 - 2) This duty overrides any obligation to the person from whom he receives instructions or by whom he is paid. (33.2 of Criminal Procedure Rules 2013)
- Reliability
 - Not mentioned directly in CrimProc
 - Implicit within objective/unbiased evidence
 - Explicit within Criminal Practice Directions
 - Consensus amongst scientific community

Expert Evidence Admissibility Rules

- Therefore factors which the court may take into account in determining the reliability of expert opinion, and especially of expert scientific opinion, include:
 - (a) the extent and quality of the data on which the expert's opinion is based, and the **validity of the methods** by which they were obtained;
 - (b) if the expert's opinion relies on an inference from any findings, whether the opinion properly **explains how safe or unsafe the inference** ...
 - (c) if the expert's opinion relies on the results of the use of any method (for instance, a test, measurement or survey), whether the opinion takes proper account of matters, such as the **degree of precision or margin of uncertainty**, affecting the accuracy or reliability of those results;
 - (d) the extent to which any material upon which the expert's opinion is based has been reviewed by others with relevant expertise (**for instance, in peer-reviewed publications**), and the views of those others on that material...
 - (h) whether the expert's methods **followed established practice** in the field and, if they did not, whether the reason for the divergence has been properly explained.

Violent Parasomnias

- What are violent parasomnias?
 - Parasomnia (e.g. sleepwalking)
 - Homicidal Somnambulism (murder)
 - Sexsomnia (sexual assault)
 - Arousal from Slow Wave Sleep (SWS)



Alcohol Provocation Controversy

- Does alcohol trigger arousals from SWS?
- Dr. Irshaad Ebrahim (London Sleep Centre)
 - Alcohol known trigger for abnormal sleep behaviour
 - Generally accepted in psychological community since the 1960s
 - Developed alcohol challenge test
 - First tested in R v Lowe (2005)
 - Ebrahim introduced by CPS



Lowe

- Jules Lowe drinking with father and brother after the death of his mother
- “High bedtime consumption of alcohol” (Ebrahim et al. 2005)
- Stabbed his father approximately 90 times
- No recollection of the event



Lowe

- Polysomnography (PSG) with sleep deprivation and alcohol challenge provocation
 - History of previous parasomnias (from suspect and family members/bed partners)
 - Three night PSG
 - Baseline
 - Sleep deprivation
 - Alcohol (blood level estimates)



Lowe

- Lowe showed no signs of sleep disorder on baseline night, but had signs of partial awakening after alcohol challenge
- Both Ebrahim and Fenwick agreed Lowe had sleep disorder triggered by stress, sleep deprivation and alcohol
- Lowe found Not Guilty by Reason on Insanity
- Served 8 months in a secure hospital



Bilton

- Bilton (2005)
- Background
 - Initiated a variety of non-consensual sexual acts upon friend
 - Returned to sofa, was awoken by friend leaving
 - Awoken again by police officers who charged him with rape of friend
- Bilton claimed to have no recollection of this event but reported a history of sleepwalking

Bilton

- Results

- History

- Sleepwalking
 - Waking with soar throat
 - Previous experience of interfering with bed partner
 - No recollection of attacking victim

- Recording

- Baseline night – evidence of sleep apnoea
 - Alcohol provocation – more arousals than baseline

- Evidence consistent with sexsomnia

- Although not responsibility to determine whether attack was a sexsomnia episode



Alcohol Challenge Not Science

- Prof Mark Pressman (Lankenau Medical Centre, PA)
 - Alcohol does not trigger sleepwalking
 - Forgotten events a result of alcoholic blackout
 - Alcohol challenge not established science
 - Not scientifically tested/peer-reviewed/Error-rates unknown
 - Little scientific evidence for alcohol as a trigger for parasomnia (6 out of 19 studies)
 - No observation of sleepwalking under laboratory conditions (only arousals from sleep)
 - Unsafe inferences - cannot generate the crime scene conditions in the clinic
 - Little scientific evidence to support use of alcohol challenge method

Thompson

- Zack Thompson drinking all day with family while on holiday in Portugal
- That night, raped a woman he had spent the day with but who had made clear that she was not interested
- Thompson did not deny the rape, but could not recall



Thompson

- PSG with alcohol provocation test at Edinburgh Sleep Clinic (2012)
- Chris Idzikowski “could not deny that Thompson’s behaviour was not alcohol-triggered sexsomnia”
- CPS called in Pressman (not used Ebrahim since Lowe)
 - Interviewed Thompson
 - “Zero chance” that Thompson was sleepwalking
 - Alcoholic blackout
- Thompson’s defence dropped sleepwalking defence
- CPS hailed it “Success in battling a rapist's 'sleepwalking' defence”

Conclusion

- Should alcohol provocation be admissible?
 - Test does not meet admissibility standards set in the Criminal Practice Directions
 - Admissibility rules do not keep problematic science out of courtrooms (Edmond et al. 2013)
 - Trojan horse of precedent
 - Double-standards in criminal offences (esp. sexual assault)
 - Women sexually assaulted when intoxicated not believed
 - Men assault when intoxicated - sleepwalking

Intoxication and problems with diagnostic tests

- “In legal cases utilizing an alcohol-induced sleepwalking defense, the role of voluntary ingestion of alcohol is greatly minimized in favour of the ‘real’ problem, sleepwalking and confusional arousal. Occurrence of the parasomnia and its accompanying behaviour are presented as the major cause of an otherwise random and unpredictable act. The criminal act becomes the fault of the parasomnia and not the fault of the person who ingested the alcohol.” (Pressman et al. 2007)