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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

The people of the state of NEVADA, Plaintiff, vs. JONATHAN KOPPENHAVER, Defendant	**Case Number: C-14-302379-1** **MOTION TO ARREST JUDGEMENT ON ALL COUNTS BASED UPON NRS 194.010(6)** Date: June 4, 2017 Time: 8:30 AM Department: VI

TO THE HONORABLE **ELISSA CADISH, JUDGE**, AND TO THE STATE OF NEVADA, REPRESENTED BY THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE BY AND THROUGH **Chief Deputy District Attorney Jacqueline Bluth** AND **District Attorney Robert Stephens**

DEFENDANT JONATHAN KOPPENHAVE A/K/A WAR MACHINE hereby submits his brief in support of his motion to arrest judgment.

I
FACTUAL STATEMENT

The facts of this case have been well detailed. A jury trial was conducted. The trial lasted three weeks, including jury selection. The case was broken down into a few different incidents that each were given names to distinguish them. There was the "Houston Incident" involving 4 counts of sexual assault. The "Boulevard Mall Incident" involved kidnapping with serious bodily injury. The "Ferret Cage Incident" involved strangulation in Victim Christine Mackinday's home. Likewise the "Snake

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Water Incident" involved strangulation in Victim Christine Mackinday's home. The crux of the case revolved around the "August 8th Incident." That case involved an assault on Victim Corey Thomas and an assault, kidnapping and sexual assault on Victim Christine Mackinday.

As the court is well aware of the facts of this case, the defense will not expound upon them except as it relates herein to specific conduct.

Mr. Koppenhaver adduced evidence that he was acting unconsciously at the times that several counts took place. At the close of trial, Mr. Koppenhaver was denied a jury instruction on unconsciousness and was prohibited from arguing that defense to the jury during closing arguments. Mr. Koppenhaver's traumatic brain injury, couples with his anxiety, depression, steroid and adderall use combined to make his actions less than fully volitional

Dr. Holper's testimony indicated that someone with a "TBI" like Mr. Koppenhaver's will reach reflexively in situations such as the one that occurred on August 8, 2014. Dr. Holper indicated that Mr. Koppenhaver lacked the free will to control his actions.

II

MR. KOPPENHAVER WAS ACTING UNCONSCIOUSLY AND WITHOUT THE REQUISITE CRIMINAL INTENT DURING EACH OF THE CRIMES FOR WHICH HE WAS CONVICTED HEREIN. ACCORDING TO NRS CHAPTER 194 - PERSONS LIABLE TO PUNISHMENT FOR CRIME, SECTION 194.010 <u>All persons are liable to punishment except those belonging to the following classes: (6) Persons who committed the act charged without being conscious thereof.</u>

A. THE COURT MUST ARREST JUDGEMENT ON ALL COUNTS CARRYING WITH THEM A CRIMINAL INTENT IN THAT MR. KOPPENHAVER WAS DENIED THE ABILITY TO PRESENT HIS DEFENSE OF UNCONSCIOUSNESS AS GRANTED HIM BY NRS 194.010(6).

Nothing in the law is as clear as a statute directly on point that is plain and not subject to multiple interpretations. Such is the case here. Counsel, after an exhaustive search, has not been able to locate any Nevada caselaw on the defense of unconsciousness a/k/a automism. A reasonable conclusion is that no caselaw is needed when a statute is so clear on its face. NRS 194.010 states:

NRS 194.010 Persons capable of committing crimes. All persons are liable to punishment except those belonging to the following classes:

1. Children under the age of 8 years.

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2. Children between the ages of 8 years and 10 years, unless the child is charged with murder or a sexual offense as defined in NRS 62F.100.

3. Children between the ages of 8 years and 14 years, in the absence of clear proof that at the time of committing the act charged against them they knew its wrongfulness.

4. Persons who committed the act charged or made the omission charged in a state of insanity.

5. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent, where a specific intent is required to constitute the offense.

6. Persons who committed the act charged without being conscious thereof.

7. Persons who committed the act or made the omission charged, through misfortune or by accident, when it appears that there was no evil design, intention or culpable negligence.

8. Persons, unless the crime is punishable with death, who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to believe, and did believe, their lives would be endangered if they refused, or that they would suffer great bodily harm.

[1911 C&P § 3; RL § 6268; NCL § 9952]—(NRS A 1979, 145; 1981, 1660; 1995, 2467; 2001 Special Session, 136; 2003, 1480; 2015, 787)[1]

In his motion for a new trial, Mr. Koppenhaver cites *Margetts v. State*, 107 Nev. 616, 619, 818 P.2d 392, 394 (1991) for the proposition that the denial of an instruction that identified that Mr. Koppenhaver had a defense, coupled with the Court disallowing Counsel to argue to the jury that unconsciousness was, indeed a defense to all crimes charged, and that toward that end the Court produced an infirmity of mammoth Constitutional proportions. Under any view of the Constitution, Mr. Koppenhaver was denied a fair trial. Mr. Koppenhaver seeks an arrest of judgment from this Court in

[1] In 1872 California adopted the statute upon which this Nevada statute is based, CA Penal Code section 26.

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addition to an order for a new trial, unless such trial is barred by double jeopardy.[2] The arrest of judgment must issue in this case because Mr. Koppenhaver was denied the due process right to present a defense at trial. This motion extends to each and every count that involves *mens rea* or even criminal negligence.

Specifically, Mr. Koppenhaver cannot be sentenced upon all counts upon which he was convicted in this case, as they required a criminal intent and such intent can be negated by unconsciousness. That Mr. Koppenhaver labored under an unconsciousness of action due to a traumatic brain injury is essential in understanding the actions for which he was charged in this case. To deprive him of the opportunity to explain that to the jury amounted to a denial of due process. Mr. Koppenhaver could have argued to the jury that his brain injury was a defense to all counts. He was prevented from doing so.

Judgment must be arrested when, before being sentenced, a defendant it to be subjected to a denial of due process as applied to the states in the 14th Amendment, thus divesting the Court of jurisdiction. See, for example see NRS 176.525, *et. seq.*, *Hogan v. State* 441 P.2d 620 (1968) (This appeal is taken from . . . the denial of the motion in arrest of judgment, upon the ground that the appellant's rights, protected by the Fourteenth Amendment of the U.S. Constitution, had been violated); *Tellis v. State* 437 P.2d 69 (1968); *Thorne v. State* 399 P.2d 201 (1965); *Rimkus v. United States*, 7 Cir., 56 F.2d 52; NRS 177.015 (allowing an appeal from a motion to arrest judgment).

The defense of unconsciousness is not new. It has been recognized by multiple courts across the years. Indeed, Counsel found the defense in each and every state he examined: Arizona, California, Georgia, Idaho, Illinois, Kentucky, Massachusetts, Montana, Nevada, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington and Wyoming.

Of note, every state that surrounds Nevada also recognizes the defense: OR, ID, CA, AZ, and UT.

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[2] Mr. Koppenhaver reserves his right to petition for an order barring a retrial based upon double jeopardy grounds, but does not so move herein. That issue will be briefed if judgment is arrested.

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1. Nevada recognizes the defense of unconsciousness

As previously stated, NRS 194.010(6) provides that persons who committed the act charged without being conscious thereof are not subject to punishment for crimes charged under the NRS.

As NRS 194.010 has existed for decades and was almost in its entirety derived from California Penal Code section 26,[3] this Court must ultimately engage in an examination of California law (among others) on the subject - - something the Court declined to do when considering the appropriateness of the instruction during the trial. First, Mr. Koppenhaver will trace the defense through time and explain its application to criminal proceedings throughout the United States, starting with Nevada.

2. Nevada has assumed unconsciousness to be a defense to a criminal charge for almost as long as Nevada has enjoyed statehood

Though the issue of unconsciousness as a defense appears to not have been directly considered in Nevada by case law that lawyers refer to as "on all fours," there is law to support the tacit and assumed approval of the defense of unconsciousness as far back as 1879. In a homicide trial where the defendant testified he had a mental impairment when committing the homicide, the Nevada Supreme Court stated, in respect to the trial Court's inappropriate remarks that amounted to a jury charge that the remarks "tendency was … to convey to the minds of the jury the idea that the Appellant's only defense was that

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[3] CA Pen. C. section 26. All persons are capable of committing crimes except those belonging to the following classes: ¶ One Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness. ¶ Two Persons who are mentally incapacitated. ¶ Three Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent. ¶ Four **Persons who committed the act charged without being conscious thereof**. ¶ Five Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence. ¶ Six Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.

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he was unconscious at the time of the fatal shot." *State v. Frazier* (1879) 14 Nev. 210, 214. The Defendant was not unconscious, and had so testified. Even so, the trial and reviewing courts are clear in this context that HAD Frazier testified he was unconscious he would have had a defense upon which the trial court would have needed to instruct.

State v. Frasier was cited for the principle that the Court's remarks were inappropriate in the *People of the State of New York v. Bracco*, 69 Hun. 206, 53 St. Rptr. 227, 23 N.Y. Supp 505 [discussing mere inadvertence with willful evasion of the law]. The "inadvertence" discussed in *Bracco* equated to the unconsciousness in *Frazier.*

Nevada, in its nascence, was aware of and understood the voluntariness of the *actus reas* was the essence of criminal culpability. 138 years later, the result must be the same.

3. Unconsciousness is a widely recognized defense

Apparently, the first time the defense of unconsciousness was used in the United States was in *Massachusetts v. Tirrell* in 1846. Albert Tirrell was acquitted in the murder of a prostitute in Boston. Tirrell slit the woman's throat, almost decapitating her. He also set fire to the brothel, then fled to New Orleans, where he was arrested. His lawyer stated that Tirrell was a chronic sleepwalker and perhaps committed the crime while asleep. The jury agreed and found him not guilty.

Another infamous case recognizing the defense was *Fain v. Commonwealth*, 78 Ky. 183, 39 Am.Rep. 213 (1879). *Fain* involved a man who fell asleep in the lobby of a Kentucky hotel. When a porter shook him to try to rouse him, the man drew a gun and shot the porter three times. While the porter held him on the floor, the man repeatedly yelled, "Hoo-wee!" He reportedly rose, left the room, and told a witness that he'd shot someone; when told who it was, the man conveyed sadness. The shooter was found guilty of manslaughter, but the conviction was reversed on appeal. Evidence that he had a lifelong history of sleepwalking and that he'd been sleep-deprived before the attack was excluded from the first trial. For more recent discussions of the defense of unconsciousness see: *Smith v. Commonwealth*, Ky. ("a blackout of his mind or had become unconscious"), 268 S.W.2d 937; *Corder v. Commonwealth*, Ky., 278 S.W.2d 77 ("The question in this case resolves itself into one of whether there was sufficient evidence to raise an issue as to Corder's insanity or unconsciousness at the time of the

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offense. If there was such evidence, the issue should have been submitted to the jury by appropriate instructions.")

In *Bradley v. State* 102 Tex. Crim. 41 (Tex. Crim. App. 1925*),* a Texas man testified that he and his mistress were preparing for bed when he became alarmed about an enemy who had made a threat against him. Fearing a secret attack, he went to bed with a pistol under his pillow. Later roused by a noise, he jumped up and fired shots. When he "found himself and got reconciled," he lit a lamp. His girlfriend was dead at the foot of the bed. Bradley was convicted of murder, but the conviction was reversed on appeal; the jury hadn't been informed of the possibility that he could have been asleep and have fired the shots without volition while in a somnambulistic state.

Pennsylvania also recognizes the defense of unconsciousness. *Commonwealth v. Ricksgers,* No. 153 of 1994. In 1994, Michael Ricksgers was convicted of the murder of his wife. He claimed he'd accidentally killed her during a sleepwalking episode, which defense lawyers argued was provoked by a medical condition, sleep apnea. Prosecutors presented an alternative explanation: that Ricksgers was upset that his wife was planning to leave him. Ricksgers told police that he awoke to find a gun in his hand and his wife bleeding in bed beside him. He said that he might have dreamed about an intruder breaking in.

In *State v. Newman,* 302 P.3d 435 (2013), 353 Or. 632, the Oregon Supreme Court found the existence of the defense of unconsciousness. "[W]hile "unconsciousness" may imply collapse or coma, there are "states of physical activity where self-awareness is grossly impaired or even absent," — i.e., … states of active automatism — that are subsumed within the meaning of the term [unconsciousness]" … and is thus part of what was meant to be covered in ORS 161.095(1).

In *Fulcher v. State,* 633 P.2d 142 (Wyo. 1981) [discussing concussions] the Wyoming Supreme Court held "that the trial court properly received and considered evidence of unconsciousness absent a plea of "not guilty by reason of mental illness or deficiency." 633 P.2d at 144. They noted, in 1981, that: "The defense of automatism, while not an entirely new development in the criminal law, has been discussed in relatively few decisions by American appellate courts." See *People v. Hardy*, 33 Cal. 2d 52, 198 P.2d 865 (1948); *People v. Martin*, 87 Cal. App. 2d 581, 197 P.2d 379 (1948); *People v. Taylor*, 31 Cal. App. 2d 723, 88 P.2d 942 (1939); *People v. Grant*, 46 Ill. App. 3d 125, 4 Ill. Dec. 696, 360

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N.E.2d 809 (1977); *Carter v. State*, Okl. Cr., 376 P.2d 351 (1962); 21 Am.Jur.2d § 29, Criminal Law, p. 115 (1965).

This language appears to have been borrowed (or pilfered), in part, from *State v. Caddell*, 215 SE 2d 348, 360 (N.C. Supreme Court 1975):

> The defense of unconsciousness, or automatism, while not an entirely new development in the criminal law, has been discussed in relatively few decisions by American appellate courts, most of these being in California where the defense is expressly provided by statute. In *Bratty v. Attorney General for Northern Ireland*, All E.R. 3 (1961) 523, Lord Denning observed: "Until recently there was hardly any reference in the English books to this so-called defense of automatism. There was a passing reference to it in 1951 in *R. v. Harrison-Owen* [1951] 2 All E.R. 726." The only express reference to it which we have found in our Reports is in *State v. Mercer*, 275 N.C. 108, 165 S.E.2d 328, which we discuss below.

At page 360 of *Caddell*, the North Carolina High Court does revisit *Mercer*: In *State v. Mercer, supra*, at p. 119, 165 S.E.2d at 336, this Court said: "Upon the present record, defendant was entitled to an instruction to the effect the jury should return verdicts of not guilty if in fact defendant was completely unconscious of what transpired when [the victims] were shot." See also: 21 Am.Jur.2d, Criminal Law, § 29; 22 C.J.S. Criminal Law § 55; Burdick, Law of Crime, §§ 216, 217 (1946); Brill, Cyclopedia of Criminal Law, §§ 124, 128 (1922); Bishop, Criminal Law, §§ 388, 395 (9th ed. 1923); Wharton, Criminal Law and Procedure, § 50 (Anderson's Edition 1957); Weihofen, Mental Disorder as a Criminal Defense, pp. 121-122 (1958); Miller, Criminal Law, § 39 (1934).” *Id.*

See also *State v. McKeon*, 38 P.3d 1236 (2002); 201 Ariz. 571A.R.S. § 13-105(37) (1994) for a discussion of the defense under Arizona law. “An unconscious act has been construed as “‘one committed by a person who because of somnambulism, a blow on the head, or similar cause is not conscious of acting and whose act therefore cannot be deemed volitional.’” *State v. Venegas*, 137 Ariz. 171, 173, 669 P.2d 604, 606 (App.1983) (quoting *People v. Ray*, 14 Cal.3d 20, 120 Cal.Rptr. 377, 533 P.2d 1017, 1019 (Cal.1975)).”

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Mr. Koppenhaver goes straight to Idaho jury instruction for a discussion of that State's treatment of the defense of unconsciousness. The instruction is found at ICJI 1507 UNCONSCIOUS ACT DEFENSE: "A person who commits what would otherwise be a criminal act without being conscious of committing the act is not guilty of a crime. ¶ Evidence has been received which may tend to show that the defendant was not conscious of committing the act for which the defendant is here on trial. If after a consideration of all the evidence you have a reasonable doubt that the defendant was conscious of committing the act at the time the alleged crime was committed, the defendant must be found not guilty.

In Ohio, the defense is statutory and the statute will look familiar to Nevadans, via California Penal Code section 26. See 21 Ohio St. 1951 § 152, reading in part as follows: "All persons are capable of committing crimes, except those belonging to the following classes: 6. Persons who committed the act charged without being conscious thereof."

Montana has a slightly different statute on the subject of unconsciousness, adding a bit of flavor and expanse of the defense. See MONT. CODE ANN. § 45-2-101(33) An "involuntary act" means an act that is: (a) a reflex or convulsion; (b) a bodily movement during unconsciousness or sleep;

As for South Dakota, "The defense of unconsciousness is based upon SDCL 22-3-1, which provides, in pertinent part: 'Any person is capable of committing a crime, except those belonging to the following classes: . . . (4) Persons who committed the act charged without being conscious thereof[.]'" *Jenner*, 451 NW2d at [710 at] 721 (alterations in original). In *Jenner*, th[e] Court acknowledged that other courts have recognized that an unconsciousness defense might be established when the defendant's conduct is caused by a variety of circumstances, including epilepsy, somnambulism, hypnotism, and some physical trauma, or even emotional trauma. *Id*. (citing 1 LaFave and Scott, Substantive Criminal Law, § 4.9 at 543 (1986)). However, this Court specifically did not embrace those causes for unconsciousness defenses. *Jenner*, 451 NW2d at 721.

In Washington State, the acceptance of the defense of unconsciousness goes as far back as the Territory of Washington, in *McAllister v. Washington Territory*, (1872) 1 Wash. Territory 360, 366 [approving an instruction that if defendant was unconscious due to a blow to the head at the time of the murder the jury was excusable; the issue being which side bore the burden of proof].

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We end our survey where Mr. Koppenhaver's argument for the unconsciousness began; in California. California has stated as follows in extending the defense to homicide crimes:

> Where not self-induced, as by voluntary intoxication or the equivalent…, unconsciousness is a complete defense to a charge of criminal homicide. [Citations omitted.] "Unconsciousness," as the term is used in the rule just cited, need not reach the physical dimensions commonly associated with the term (coma, inertia, incapability of locomotion or manual action, and so on); it can exist - and the above-stated rule can apply - where the subject physically acts in fact but is not, at the time, conscious of acting.

People v. Newton (1970) 8 Cal.App.3d 359, 376, 87 C.R. 394.

This is a sampling of states and is, by no means, an exhaustive list.

4. **Unconsciousness defined**

The Wyoming Supreme Court, relying heavily upon California law, syllogized unconsciousness with automatism. They defined and discussed autonomism as follows:

> "Automatism is the state of a person who, though capable of action, is not conscious of what he is doing. While in an automatistic state, an individual performs complex actions without an exercise of will. Because these actions are performed in a state of unconsciousness, they are involuntary. Automatistic behavior may be followed by complete or partial inability to recall the actions performed while unconscious. Thus, a person who acts automatically does so without intent, exercise of free will, or knowledge of the act." *Id.* at 145. ¶ "Automatism may be caused by an abnormal condition of the mind capable of being designated a mental illness or deficiency. Automatism may also be manifest in a person with a perfectly healthy mind." *Id.*

Fulcher v. State, 633 P.2d 142, 144 (Wyo. 1981)

The State of Illinois, in *People v. Grant* 46 Ill.App.3d 125, 360 N.E.2d 809, 4 Ill.Dec. 696 (1977) defines autonomism as follows:

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The term automatism is defined as the state of a person who, though capable of action, is not conscious of what he is doing. Automatism is not insanity. (LaFave & Scott, Criminal Law s 44 at 337.) In the language of section 4--1 of our Criminal Code, it is manifested by the performance of involuntary acts that can be of a simple or complex nature. Clinically, automatism has been identified in a wide variety of physical conditions including: epilepsy, organic brain disease, **concussional states following head injuries**, drug abuse, hypoglycemia and, less commonly, in some types of schizophrenia and acute emotional disturbance. (LaFave & Scott, 337.) Psychomotor epileptics not only engage in automatic or fugue-like activity, but they may also suffer convulsive seizures. 2 Cecil-Loeb, Textbook of Medicine, ed. Beeson & McDermott, 1512--1513 (12th ed., 1967)(**emphasis added**).

5. Unconsciousness is different than insanity

The mental illness or deficiency plea does not adequately cover automatic behavior. Unless the plea of automatism, separate and apart from the plea of mental illness or deficiency is allowed, certain anomalies will result. For example, if the court determines that the automatistic defendant is sane, but refuses to recognize automatism, the defendant has no defense to the crime with which he is charged. If found guilty, he faces a prison term. The rehabilitative value of imprisonment for the automatistic offender who has committed the offense unconsciously is nonexistent. The cause of the act was an uncontrollable physical disorder that may never recur and is not a moral deficiency. *Fulcher v. State*, 633 P.2d 142, 146 (Wyo. 1981)

"A defense related to but different from the defense of insanity is that of unconsciousness, often referred to as automatism: one who engages in what would otherwise be criminal conduct is not guilty of a crime if he does so in a state of unconsciousness or semi-consciousness. * * *" LaFave & Scott, Criminal Law, § 44, p. 337 (1972).

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> "The defenses of insanity and unconsciousness are not the same in nature, for unconsciousness at the time of the alleged criminal act need not be the result of a disease or defect of the mind. As a consequence, the two defenses are not the same in effect, for a defendant found not guilty by reason of unconsciousness, as distinct from insanity, is not subject to commitment to a hospital for the mentally ill." *State v. Caddell*, 287 N.C. 266, 215 S.E.2d 348, 360 (1975).
>
> The principal reason for making a distinction between the defense of unconsciousness and insanity is that the consequences which follow an acquittal will differ. The defense of unconsciousness is usually a complete defense.[fn omitted] *State v. Mercer*, 275 N.C. 108, 165 S.E.2d 328, 334 (1969). *State v. Caddell*, supra; 21 Am.Jur.2d, Criminal Law, § 29, p. 115 (1965). That is, there are no follow-up consequences after an acquittal; all action against a defendant is concluded.

Fulcher v. State, 633 P.2d 142, 144 (Wyo. 1981)

6. Various types of unconsciousness

Some types of unconsciousness that have been legally recognized are: Blackouts (*People v. Cox* (1944) 67 Cal.App.2d 166, 172 [153 P.2d 362]), delirium, somnambulism (*People v. Methever* (1901) 132 Cal. 326, 329 [64 P. 481], overruled on other grounds in *People v. Gorshen* (1953) 51 Cal.2d 716 [336 P.2d 492]), [ ] epileptic seizures (*People v. Freeman* (1943) 61 Cal.App.2d 110, 115-116 [142 P.2d 435]), and traumatic brain injuries (*Carter v. State*, Okl. Cr., 376 P.2d 351 (1962)), *People v. Magnus*, 92 Misc. 80, 155 N.Y.S. 1013)

7. Unconsciousness does not require that the defendant be incapable of movement

See, e.g. *People v. Hughes* (2002) 27 Cal.4th 287, 343-344 [116 Cal.Rptr.2d 401, 39 P.3d 432] [jury was adequately informed that unconsciousness does not require that person be incapable of movement].

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8. Lastly, and most importantly, unconsciousness is a complete defense to the *actus reas.*

As unconsciousness is a defense to the *actus reus* and not the *mens rea* it applies to both general and specific intent crimes. As proof positive of this principle, unconsciousness was held to be a valid defense in cases involving only criminal negligence. (See *People v. Freeman* (1943) 61 Cal.App.2d 110, 142 P.2d 435[former negligent homicide statute]:

> "No principle of criminal jurisprudence was ever more zealously guarded than that a person is guiltless if at the time of his commission of an act defined as criminal he has no knowledge of his deed. ... A person who cannot comprehend the nature and quality of his act is not responsible therefor. An act done in the absence of the will is not any more the behavior of the actor than is an act done contrary to his will." (61 Cal.App.2d at 117.)

B. **IF THE COURT DOES NOT ARRTEST JUDGMENT AND PROCEEDS TO SENTENCE MR. KOPPENHAVER, THE FACT THAT MR. KOPPENHAVER ACTED UNDER A HAZE OF UNCONSCIOUSNESS MITIGATES HIS ACTIONS AND THE COURT SHOULD SECLECT APPROPRIATELY MITIGATED SENTENCES BASED UPON THE SENTENCING POSITION PAPERS FILED CONCURRENTLY HEREWITH.**

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RESPECTFULLY SUBMITTED

Dated:30 May 2017

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