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Closing arguments in sleepwalking murder trial could focus on battle of the experts

PHOENIX (Court TV) — On its surface, Scott Falater's claim that he was sleepwalking when he killed his wife, Yarmila, seems preposterous. But in closing arguments Wednesday, Falater's attorney Michael Kimerer is expected to ask jurors to keep an open mind — and given the prosecution's evidence, that may be his greatest hurdle.

For the past four weeks, Falater has been on trial for allegedly murdering his wife, Yarmila, on January 16, 1997. Falater stabbed his wife 44 times at their home, dragged her into their pool and then held her head under water.

The defense does not deny that Falater killed his wife, but insists that he did not commit murder because he was sleepwalking at the time, and therefore lacked the intent to kill. Yarmila, the defense believes, was killed when she tried to awaken a sleepwalking Falater while he was trying to fix a pool water pump with a hunting knife.

As they did during the trial, prosecutors are expected to emphasize expert testimony and an eyewitness account of the killing to cast doubt on the sleepwalking theory.

Falater's neighbor, Gregory Koons, who heard Yarmila's screams, testified that he saw Falater go back into his house after he placed his wife in the pool. Falater, said Koons, motioned to his dog to be quiet and then turned the lights on and off in the house.

Furthermore, said the neighbor, Falater put on a pair of gloves before dragging his wife to the pool. With Yarmila's body left in the now-crimson water, Falater took off his bloody clothes, put them in a plastic container, and threw them in a garbage can. He then removed the container from the garbage can and placed it in the trunk of his car before heading back inside the home, said Koons.

SLEEPWALKING MURDER TRIAL

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Supported by the testimony of rebuttal sleep experts Drs. Mark Pressman and David Baratz, prosecutors are expected to argue that Falater's actions prove that he was not sleepwalking at all during the attack. Prosecutor Juan Martinez may argue to jurors that defense is asking them to accept too many extraordinary factors in Falater's alleged sleepwalking episode: that Falater's sleepwalking lasted between 45 and 50 minutes, more than twice the typical sleepwalking spell and that the defendant's actions were more organized and complicated than most somnambulists.

Prosecutors may stress in closing arguments that Falater's defense is a ruse and an attempted cover-up. His actions — particularly the changing of his bloody clothes and use of gloves — suggest that he was not sleepwalking and that the killing was premeditated.

Still, prosecutor Juan Martinez has not established a clear motive for the murder — and Falater's defense may have to focus on that in its attempt to persuade jurors. Except for one witness' claim that Yarmila was unhappy with the demands of Falater's Mormon Church, no witnesses have told jurors about prior instances of domestic abuse or infidelity in the Falaters' 20-year marriage.

Defense attorney Kimerer may emphasize the testimony of Falater's children, who told jurors that their parents had a loving marriage. Several of Falater's colleagues also testified that he was a kind, gentle man who never could have purposely killed his wife so brutally.

The defense may also focus on Falater's sleepwalking history and the testimony of his mother and sister, who told jurors about several sleepwalking incidents. His sister testified that he once threw her out of his way during one spell. Kimerer may stress to jurors that Falater's history proves that he is not making up his defense.

Kimerer is expected to focus on Falater's professed love of his wife and his claim that his role in her death will torment him for the rest of his life. Falater's actions during the killing are problematic to his defense, but Kimerer will ask jurors to believe his experts' claim that sleepwalkers can perform complicated tasks. Kimerer will ask jurors to believe noted sleep specialist Dr. Roger Broughton's assertion that Falater's inexplicable actions — such as placing damaging evidence in his car and going back into the house after the killing — suggest that he was not cognizant when he killed Yarmila.

Although the open-mindedness of the jury may be the key to Falater's defense, an important ruling by Judge Ronald Reinstein may also prove vital for an acquittal. Citing hearsay, Judge Reinstein refused to admit the testimony of a witness who claimed a few weeks prior to the murder, Falater discussed a case out of Canada in which the defendant was acquitted of murder using a sleepwalking defense. This testimony would have bolstered the prosecution's allegations of premeditation.

If acquitted, Falater would be the first U.S. citizen to successfully use a sleepwalking defense at a murder trial. But if convicted, he could face the death penalty.