

## Tragedy in the Maine Woods

*The Deer Hunters: Sometimes a traditional sport can lead to a tragic end.*

By **ROBERTA SCRUGGS**

David Noyes looked his brother, Al, right in the eye and said, "If I get shot by one of the kids just tell them not to worry about it. You've got to die of something."

Noyes felt he had a right to hunt even though he'd lost his license for illegally shooting a moose and he was determined not to get caught by Maine game wardens. So he hunted in red and black clothes and a camouflage hat, not the fluorescent orange required by law. His brother couldn't talk him out of it by arguing that their family would suffer and so would the hunter who shot him.

On Dec. 6, 2001, Jimmy Newcomb, their cousin and close friend, fired through brush from 80 feet away, striking David Noyes in the back of the head.

"I started screaming and rubbing his chest and arm, and telling him, 'Breathe David, breathe,'" Al says. "And he would breathe a little bit. Then he'd stop breathing. He wasn't conscious, but every time I'd scream at him to breathe he'd take a breath."

Newcomb held his cousin in his arms until the ambulance arrived in Canton. They raced to a spot where a helicopter could land, but Noyes died before they reached it.

"From the moment Jimmy pulled the trigger," Al says, "David was gone forever."

With 211,000 hunters, Maine had six hunting fatalities in the past decade. That's a remarkable contrast to the toll before a nationwide safety crusade began a half-century ago. From 1932 to 1941, with half as many hunters, 131 people died in hunting homicides.

Yet each failure is tragic and questions must be answered that literally make jurors weep. When does an unintended action become a crime? Do you punish the shooter or pity him?

"There are two victims here. If this person is a normal person, they're going through a hell of a lot of torture," says Gary Anderson, Maine's safety officer for 25 years. "It's something that they would not have done for the world and they would give the world to take that instant back."

Newcomb, 37, is "adamant that he saw a deer and that's what he fired at," says his attorney, Neal Pratt, adding the bullet hit a tree before it struck Noyes. But in January 2003, Newcomb was indicted for manslaughter. Prosecutor William Bagdoyan says it was criminally negligent not to identify his target and "there's no evidence there was ever any deer anywhere near either one of them."

Since 1982, 19 other Maine hunters, including five juveniles, have killed a person. Seven were acquitted of manslaughter, including all five who chose a jury trial. Four were never charged because the shootings were ruled accidental. The six

adults convicted of manslaughter either pled guilty or faced a judge. Another hunter pled guilty to driving deer and a teenager's charges were dismissed in a plea bargain. Their penalties ranged from community service to five years in jail.

Three victims were non-hunters, including the most infamous hunting homicide in Maine history. Karen Wood, mother of young twins, was wearing white mittens while hanging laundry behind her house Nov. 15, 1988. Donald Rogerson never denied he killed her, but testified he'd fired at a white "flag" -- the tail of a deer. After deliberating two days, a jury acquitted him of manslaughter.

"I think the community standards -- integrity, morality -- were also being tested," said Wood's husband, Kevin, said after the verdict. "I feel sorry for the Bangor community in the sense that I think they failed that test."

The verdict attracted international attention and Maine law was changed in an effort to hold hunters accountable. But justice is difficult to define in hunting homicides, much less achieve. Defendants didn't set out to commit a crime, like a person who robs a store. They didn't drink and drive without caring about the consequences. The agony of the hunter -- Rogerson's cries of, "Oh, no, oh, no, oh, no," could be heard 300 yards away -- touches everyone. The defendants are extraordinarily remorseful, sometimes to the point of attempting suicide. One defense attorney told jurors, "There are no winners in this case." One judge acquitted a defendant, saying he "has already been sentenced by a court higher than this."

Those circumstances make hunting homicides unusual, but one thing makes them unique and it isn't a question of

morality, it's a matter of law. To convict a defendant of manslaughter, it must be proved beyond a reasonable doubt his conduct was a gross deviation from what a reasonable person would do. Not just negligent, but grossly negligent. In one Maine case, for example, a man took a gun off the wall and pulled the trigger, killing his friend as he cooked their supper.

"It was completely unintended, but he got convicted," says Bill Stokes, Maine's deputy attorney general. "You never pull the trigger of a gun unless you check to see if it's loaded."

Proving gross deviation is much more difficult when firing a deadly weapon *is* reasonable behavior. By permitting hunting, Stokes says, society also accepts the risk that hunters may miss a deer and shoot a person. In most fatalities, the defendants insisted they'd shot at deer and missed. And that's very difficult to disprove beyond a reasonable doubt. The shooter himself may not know the truth.

Glen Preston still has a vivid memory of the deer he saw on Nov. 9, 1987, but he's also painfully aware that deer was nothing but a tragic illusion.

Preston, then 23, had hunted all day without success. Just before dusk, he was walking down a rarely used camp road when he heard a branch snap. He looked up and saw a deer's front legs as it stepped into the road 75 yards away. Then he saw the deer's face and antlers. He looked down to cock his gun and when he raised his eyes, he saw a flash of white. Thinking it was the deer's tail, he fired.

"I heard this ungodly, terrible sound," Preston said. Then his voice broke and he took a ragged breath. "You'll have to excuse

me for a minute. It's been a long time, but it's just like it happened yesterday.

“So I heard this real weird, real high-pitched strange noise like I'd never heard before in my life. His fiancé was standing right beside him and I couldn't even see her because she was dressed in all navy blue. It was her that was making the noise.”

Preston killed Harvey Smith III, a 31-year-old New Hampshire man headed to his family's camp in Roque Bluffs. Wearing a brown coat and beige hat, Smith leaned over to move a log that blocked the road. When the shot hit him, Smith fell forward, saying, “I've been hit. Oh, my God.”

Some hunting incidents are easier to understand than others. Sometimes the victim was out of sight, the gun discharged accidentally or the victim stepped into the line of fire. But even other hunters are baffled when a hunter mistakes a person for a deer, bear or even a partridge. In the 39 years Maine has kept such records, more than 200 people have been mistaken for game – nearly 20 percent of those wounded or killed in hunting incidents.

Preston has had 16 long years to think about how he could make such a terrible mistake. “They do claim that if a person wants to see something bad enough,” he says, “that his mind will see it.”

Our eyes receive visual information in millions of fragmented bits, but we see “a seamless, detailed reality” because our brains fill in the gaps, says Dr. John Ratey, Harvard psychiatry professor and author of “A User's Guide to the Brain.

Imagine a puzzle of a movie star's face appearing piece by piece. At some point, the lips, the eyes, the hairline seems familiar

enough to say, “Cameron Diaz.” If you're wrong, and it's really Gwyneth Paltrow, there's no harm done. But if a hunter guesses too quickly, the consequences can be fatal. Fluorescent-orange clothing helps because “it's so different that it startles you,” Ratey says. “You're not going to fill in the picture. You're going to say, ‘Oh, my God, no.’”

When we want or expect to see something, like a deer in the hunting season, the odds of a mistake go up. The illusion can be so convincing that even if a hunter knows he hit a person, he may still believe he fired at an animal. After a fatal shot, hunters replay the event over and over in their minds. “Not because they're trying to,” Ratey says. “This is all without real conscious effort. But when they begin to rehearse it, they say, ‘I know it was a deer. I know it was a deer.’ They see it as a deer again and again and again until it becomes cemented.”

Preston, however, could not escape the truth. Before his trial began, he had judged himself. He lost weight until he was “just skin and bones.” He fell into a deep depression. A year to the day after he killed Smith, Preston shot himself.

“Thank the good Lord, it just grazed the side of my stomach,” he says. “I just hated myself for taking someone's life.”

His 17 months in prison cost him his wife, his home and everything he had. Yet over time, Preston rebuilt his life. Now 39, he's married “to a wonderful person” and works digging clams and lobstering. He'll never pick up another gun and he has a warning for those who do.

“Tell them to close their eyes, shake their head and look again,” Preston says. “Make sure you see what you're seeing. Because

your mind can play tricks. And it can really be a tragic trick. Like it was for me.”

The shooter’s grief is great, but so is the suffering of the victim’s family. On Nov. 22, 1994, a 16-year-old hunter killed Alan Wood, 46, as he paddled on Freedom Pond. Craig Turner testified he fired at a deer and never saw Wood or his two companions, who were dressed in camouflage clothing to hunt geese.

The case was considered a test of Maine’s 1991 target identification law, which lists what a reasonable and prudent hunter would do. The goal was to establish a clear standard, so a judge or jury could tell when a hunter had been grossly negligent or reckless. But a judge acquitted Turner, saying the law “really amplifies” the standard. To convict, he would have to find Turner “actually fired at the canoe bearing the three men and that he failed to properly identify that target before doing so... This court cannot make that finding ... If he fired at a deer, he probably missed and the attendant circumstances under which he shot were no different than those usually present for hunters in the Maine woods.”

Sharon Wood, who lost her husband of 26 years, never wanted to see Turner go to jail. At most, she thought he might do community service. But she still regrets she never got a chance to tell him how her family felt.

“My husband must have been just a name in the paper to him,” she says, her eyes filling with tears. “I think I just wanted him to know what kind of a loss we were feeling. That we had a new grandchild coming that he would never know. That everything he’d worked for, for 25 years, didn’t matter any more.”

Al Noyes struggles with those same mixed feelings. He loved his brother, but cares about his cousin, too. The family, even his brother’s three grown sons, doesn’t want Newcomb punished beyond the loss of his hunting license. Newcomb, his family says, is just a shell of the man he once was.

“We’ve already lost David,” Noyes said. “We don’t need to lose Jimmy, too.”

So Noyes just nodded grimly on Aug. 25, when asked if he’d agreed to a plea bargain reached in his cousin’s case. Newcomb pled guilty to reckless conduct with a dangerous weapon, a Class C felony. He could have received a maximum penalty of five years in prison and a \$5,000 fine. But Justice Thomas E. Delahanty II, noting that Newcomb had voluntarily helped David Noyes’ family financially, sentenced him to two years probation and 100 hours of community service. As a convicted felon, Newcomb can never legally hunt with a firearm again.

“This is about as unfortunate a situation as I’ve seen in a long time...” the judge said, looking down from the bench as Newcomb stood with his head bowed. “You stepped up to the plate and accepted responsibility. And I’m sure it’s going to be in your mind for a long time.”