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William Reaves v. State of Florida
Docket Number: SC04-891

OF REAVES VERSUS THE STATE OF FLORIDA.

GOOD MORNING , CHIEF JUSTICE PARIENTE AND MEMBERS OF THE COURT. I AM WILLIAM HENNIS TO ARGUE THE REAVES CASE. OBVIOUSLY WE HAVE BEEN HERE BEFORE ON THIS CASE. I THINK TO DAY , THERE REALLY ARE TWO ISSUES THAT I THINK ARE OUT THERE. ONE HAS TO DO WITH WHETHER OR NOT TRIAL COUNSEL , MR . KIRCHNER , MADE A DECISION ABOUT PRESENTING A VOLUNTARY INTOXICATION DEFENSE , AND THE RELATED QUESTION IS WHETHER OR NOT THAT WAS A STRATEGIC DECISION, SUCH THAT HIS WORK ON THAT ISSUE WAS NOT INEFFECTIVE. THE SECOND ISSUE HAS TO DO WITH WHETHER OR NOT THE COURT BELOW -- BELOW ABUSED ITS DISCRETION WHEN IT FOUND THAT PRESENTING EUGENE HICKMAN 'S TESTIMONY AT THE EVIDENTIARY HEARING WAS NOT REQUIRED , AND THE COURT DENIED A MOTION FOR HABEAS CORPUS THAT MR . REAVES PUT FORWARD TO ATTEMPT TO TRY TO GET MR . HICKMAN'S TESTIMONY AT THAT HEARING.

JUSTICE: ON THE VOLUNTARY INTOXICATION DEFENSE , WHAT WAS PRESENTED AT THE EVIDENTIARY HEARING THAT WOULD PROVE INTOXICATION , OTHER THAN THE DEFENDANT'S SELF REPORT SOMETHING.

OBVIOUSLY THAT IS RELATED IN SOME WAYS , JUSTICE BELL , TO THE QUESTION OF OUR INABILITY TO PRESENT MR . HINTON'S TESTIMONY , AND I WOULD POINT THAT OUT UP FRONT THAT WHAT WE WANTED TO DO OBVIOUSLY WAS TO PRESENT THE TESTIMONY OF THE ONLY PERSON , REALLY , TO TALK TO AND SEE MR . REAVES IN THE TIME IMMEDIATELY AFTER THE CRIME , SINCE THERE WERE NO CLOSE-UP WITNESSES AT THE TIME OF THE OFFENSE , AND MR . REAVES RAN ACROSS VERO BEACH TO MR . HINTON 'S HOME, AND THAT IS WHERE IN FACT , HE SAW AND TALKED TO SOMEBODY WHO , BASED ON MR. HINTON'S AFFIDAVIT , ACTUALLY WAS GOING TO BE WILLING TO TESTIFY HE WAS INTOXICATED .

JUSTICE: SO YOU AGREE OTHER THAN THE DEFENDANT MR . HINTON, THAT WOULD BE THE ONLY EVIDENT EVIDENCE TO PROVE -- THE ONLY EVIDENCE TO PROVE THAT INTOXICATION .

I WOULDN'T SAY ONLY EVIDENCE. WE DID PRESENT TRIAL TESTIMONY WHICH IN THE TRIAL COURT'S ORDER DIDN'T REACH THE LEVEL TO PROVE HIS INTOXICATION AT THE TIME OF THE OFFENSE. AT LEAST THAT IS THE WAY I READ IT.

JUSTICE: BUT THOSE EXPERTS WERE RELYING ON THE DEFENDANT'S SELF REPORTING.

THAT AND OF COURSE THE HINTON AFFIDAVIT AND ALSO TO SOME EXTENT THE THREE PRIOR STATEMENTS OF MR. HINTON THAT WERE NEVER ALLOWED TO BE USED BACK AT TRIAL , ALTHOUGH DEFENSE COUNSEL KIRCHNER DID TRY TO USE THEM AS IMPEACHMENT OF THE TESTIMONY OF HINTON FROM THE FIRST TRIAL. IT WAS READ INTO THE RECORD HE WAS NOT ALLOWED TO USE THOSE STATEMENTS FOR IMPEACHMENT. CERTAINLY OUR POSITION IS THAT THERE IS INFORMATION IN THOSE STATEMENTS THAT SUPPORT AN INTOXICATION DEFENSE .

JUSTICE: THAT IS WHAT I WOULD LIKE, PRIOR TO THIS EVIDENTIARY HEARING AS FAR AS THE DEFENSE COUNSEL IN THIS CASE IN HIS PERFORMANCE, WHAT EVIDENCE DID HE HAVE FROM MR. HINTON IN THE STATEMENTS HINTON HAD GIVEN, EITHER TO LAW ENFORCEMENT OR IN DEPOSITION, THAT WOULD HAVE INDICATED THAT YOUR CLIENT WAS INTOXICATED?

THERE IS CERTAINLY AN EQUIVOCAL STATEMENT FROM HINTON HAVING TO DO WITH THE USE OF COCAINE, IN WHICH THE END OF THE SENTENCE ISN'T COMPLETED IN HIS STATEMENT TO THE POLICE, THAT I THINK AN OBJECTIVE PERSON COULD READ AS SAYING, AS MEANING THAT IN FACT, REAVES HAD BEEN USING COCAINE IMMEDIATELY IN THE HOURS PRIOR TO THE OFFENSE, WHICH WAS THE LAST TIME THAT HINTON HAD SEEN HIM, AND WHEN HE TESTIFIED IN THOSE STATEMENTS, IN HIS STATEMENTS TO THE POLICE, THERE IS A REFERENCE TO THAT. THERE IS ALSO SOME TESTIMONY ABOUT USING MARIJUANA THAT I THINK IS ACTUALLY TIED TO HINTON'S CONTACT WITH HIM IN HINTON'S HOME AFTER THE OFFENSE, SO THAT CLEARLY WOULDN'T HAVE TO DO WITH INTOXICATION AT THE TIME OF OFFENSE -- AT THE TIME OF THE OFFENSE, BUT, AGAIN, I THINK IT DOES GO TO THE IMPORTANCE OF HAVING THAT INFORMATION PRIOR, FOR EXAMPLE THE INFORMATION THAT DR. WEITZ TESTIFIED AT THE EVIDENTIARY HEARING THAT HE WAS PREPARED, IF KIRCHNER HAD ASKED HIM BACK AT THE TIME OF THE PRETRIAL, THAT IT WAS HIS OPINION AND HE WAS PREPARED TO TESTIFY THAT HE WAS INTOXICATED AND UNABLE TO FORM INTENT AT THE TIME OF THE OFFENSE. SO THAT IS CLEAR THAT IT WAS PRESENTED.

JUSTICE: WHAT DID DR. WYETHS ACTUALLY SAY AT THE TIME OF THIS HEARING? HE IS NOW SAYING THAT HE WOULD HAVE SAID HE WAS INTOXICATED, BUT AS I READ THIS RECORD BACK AT THE ACTUAL PENALTY PHASE TIME, DR. WEITZ ACTUALLY SAID THAT HE COULD NOT TELL IN FACT THAT THE DEFENDANT WAS INTOXICATED. ISN'T THAT A PART OF THIS RECORD?

THAT IS NOT MY RECOLLECTION OF THE RECORD, JUSTICE QUINCE. IN FACT HIS TESTIMONY WAS SIMPLY THAT HE WAS NEVER ASKED AS TO WHETHER OR NOT HE BELIEVED THAT MR. REAVES WAS INTOXICATED AT THE TIME OF THE OFFENSE, AND I THINK THAT FITS IN WITH THE ISSUE THAT I WAS TALKING ABOUT BEFORE, THE THINGS THAT MR. KIRCHNER DIDN'T DO THAT HE SHOULD HAVE DONE, IF IN FACT HE HAD SOME SORT OF, SOME SORT OF INVESTIGATION OF INTOXICATION THAT HE DID BACK AT THE TIME OF TRIAL. NOW, HE WAS PRETTY EQUIVOCAL IN HIS TESTIMONY. I MEAN, HE SAID MAYBE IT WAS A STEALTH DEFENSE. MAYBE I DIDN'T REALLY RELY ON IT AS MY PRIMARY DEFENSE.

AS I REMEMBER HIS TESTIMONY AT THE EVIDENTIARY HEARING, WAS THAT HE AND DR. WEITZ ACTUALLY DISCUSSED THIS CASE, AND THEY DISCUSSED IT IN TERMS OF THE VIETNAM SYNDROME AND VOLUNTARY INTOXICATION, AND DID DR. WEITZ DISPUTE THAT THEY IN FACT HAD SUCH A CONVERSATION?

I BELIEVE SO, JUSTICE QUINCE. MY RECOLLECTION IS THAT THERE WASN'T REALLY TESTIMONY.

JUSTICE: WHAT DID DR. WEITZ ACTUALLY SAY? DID HE SAY I NEVER HAD A CONVERSATION WITH DEFENSE COUNSEL ABOUT THIS?

I DO NOT RECALL. I DO REMEMBER ON PAGE 110 ON THE DAY HE TESTIFIED THAT HE DEMONSTRABLY SAYS THAT HE BELIEVES IN RESPONSE TO A QUESTION THAT, HE BELIEVES MR. REAVES WAS INTOXICATED AND HE BELIEVED THAT AT THE TIME. THERE HAD JUST NEVER BEEN ANY DIRECT REQUESTS ON THE PART OF TRIAL COUNSEL TO APPROACH THAT ISSUE, AND THAT ACTUALLY FITS IN WITH THE RECORD ON THE REST OF WHAT HE DIDN'T DO. I MEAN, HE DID NOT, FROM OUR POINT OF VIEW, MEET THE BASIC REQUIREMENTS OF THE ADA GUIDELINES AS FAR AS THE INTOXICATION DEFENSE. HE ADMITTED HE NEVER TALKED WITH MR. HINTON AT ALL ABOUT MR. HINTON'S VIEW OF MR. REAVES'S INTOXICATION AT THE TIME OF THE OFFENSE,

HIS DRUG USE WITH MR. REAVES OVER SOME YEARS BEFORE THAT, OR ANYTHING TO DO WITH DRUGS.

JUSTICE: WELL, WHAT HAD MR. HINTON SAID IN HIS STATEMENT AND ACTUALLY IN HIS TESTIMONY, DURING THE INITIAL TRIAL, ABOUT MR. REAVES'S CONDITION AT THE TIME HE CAME TO HIS HOUSE?

I THINK IT IS PRETTY CLEAR THAT AT THE ORIGINAL TRIAL, WHICH OF COURSE, WAS THE TRIAL BEFORE KIRCHNER GOT INVOLVED, THAT HE HAD TESTIFIED THAT HE SEEMED APPARENTLY, WITHIN NORMAL LIMITS. HE DIDN'T GIVE ANY INFORMATION AT THAT TIME DURING HIS TESTIMONY, THAT ANYTHING OUT OF THE ORDINARY WAS GOING ON WITH MR. REAVES'S CONDITION, BUT RECALL, TOO, THAT MR. KIRCHNER, ALSO, DIDN'T TALK TO THE PERSON WHO POSSIBLY WAS THE LAST PERSON TO SEE MR. REAVES BEFORE ALL THIS HAPPENED, WHICH WAS MR. REAVES'S GIRLFRIEND, AND IN WHOSE HOME HE HAD BEEN MENTIONS BEFORE THE SHOOTING AND IN WHICH A SUBSTANTIAL AMOUNT OF DRUGS AND DRUG PARAPHERNALIA WAS CONFISCATED, AND IN HER STATEMENT TO THE POLICE, SHE COMPLETELY DENIED KNOWING ANYTHING ABOUT ANY DRUGS OR ANYTHING DRUG PARAPHERNALIA BEING AT HER HOME. HE ADMITTED IN THE EVIDENTIARY HEARING HE NEVER EVEN TALKED TO THAT WITNESS. HE DIDN'T REMEMBER WHETHER HE HAD LISTENED TO THE TAPED INTERVIEW OF HER.

JUSTICE: NOW THAT YOU HAVE HAD THE OPPORTUNITY TO DO THAT, WHAT DID SHE TESTIFY TO? AT THE EVIDENTIARY HEARING, WHAT DID THE GIRLFRIEND TESTIFY TO?

SHE DIDN'T TESTIFY AT THE EVIDENTIARY HEARING, JUSTICE BELL. WHAT HAPPENED AT THE EVIDENTIARY HEARING THE DEFENSE AND STATE AGREED AND STIPULATED INTO THE RECORD HER TAPED INTERVIEW WITH THE POLICE WHICH HAD NEVER BEEN TRANSCRIBED AND WASN'T FOUND ANYWHERE ELSE AND BASICALLY WHAT SHE SAID SHE WAS NOT AT THE HOUSE FOR HOURS AFTER MR. REAVES WAS THERE, THAT SHE DIDN'T KNOW ANYTHING ABOUT ANY DRUGS OR DRUG PARAPHERNALIA BEING THERE AND SHE ABSOLUTELY DENIED THAT SHE HAD ANY DRUGS IN HER OWN POSSESSION.

CHIEF JUSTICE: JUSTICE CANTERO HAS QUESTION.

I APOLOGIZE.

DID DEFENSE COUNSEL TESTIFY AT ALL ABOUT HIS STRATEGIC PROBLEMS IN PRESENTING A VOLUNTARY INTOXICATION DEFENSE, IN OTHER WORDS WHETHER HE THOUGHT SUCH A DEFENSE WAS VIABLE, WHETHER IT WOULD WORK BEFORE THIS JURY, WHETHER HE HAD TRIED THAT DEFENSE BEFORE, THAT KIND OF THING?

HE CERTAINLY INDICATE ADD FAMILIARITY WITH THE DEFENSE. HE INDICATED THAT WHAT HE WAS ATTEMPTING TO DO WAS TO USE THIS AS SORT OF A STEALTH DEFENSE, A BACKUP DEFENSE FOR LACK OF A BETTER WORD. NOW, MY VIEW IS THAT, THAT IF THAT WAS IN FACT THE CASE, THERE WERE CERTAIN MINIMAL THING THAT IS HE NEEDED TO DO AS PART OF THE INVESTIGATIVE PROCESS IN ORDER TO BE ABLE TO LATER TESTIFY THAT HE COULD GET TO THE POINT WHERE HE COULD MAKE A STRATEGIC DECISION, AND WHAT I HAVE TRIED TO DO IN MY BRIEFING IS OUTLINE THE REASONS WHY THAT WAS SIMPLY IMPOSSIBLE. HE COULD NOT HAVE MADE A STRATEGIC DECISION, IN A SITUATION WHERE HE ADMITTED HE DOESN'T RECALL EVER TALKING TO HIS CLIENT ABOUT WHETHER OR NOT TO PRESENT A VOLUNTARY INTOXICATION DEFENSE.

JUSTICE: DID THE DEFENDANT TESTIFY AT THE EVIDENTIARY HEARING THAT HE TOLD THE ATTORNEY THAT HE HAD TAKEN COCAINE ON THAT DAY OR CLOSE TO THE TIME OF THE CRIME?

SURE. ABSOLUTELY. IN FACT THE SO-CALLED CONFESSION THAT WAS TAKEN AFTER MR. REAVES

WAS TAKEN INTO CUSTODY IN GEORGIA TWO DAYS AFTER THE OFFENSE , IS REPLETE WITH INFORMATION ABOUT HIS INTOXICATION AT THE TIME OF THE OFFENSE. MY RECOLLECTION IS HE TALKS ABOUT IT 13 TIMES IN THE CONFESSION, SO HE WAS CERTAINLY ON NOTICE THAT THERE WAS A PROBLEM. THERE IS NO QUESTION ABOUT THAT .

I KNOW WE HAVE HAD CASES HERE WHERE THE ATTORNEY SAID I KNOW ABOUT THE VOLUNTARY DPOX INTOXICATION. I KNEW ABOUT THE -- INTOXICATION. I KNEW ABOUT THE DRUGS BUT IN THIS PARTICULAR COUNTY I FOUND THAT DPOUND THAT VOLUNTARY -- FOUND THAT VOLUNTARY INTOXICATION JUST DOESN'T WORK . IS THERE REFERENCE TO THAT KIND OF DEFENSE?

I THINK SO BUT AT THE TIME YOU HAVE TO TAKE THAT WITH AGRARIAN OF SA LT THAT OTHER THAN THE CLIENT'S CONFESSION, IT SELF , THERE IS NO EVIDENCE THAT HE DID ANYTHING OBJECTIVELY TO PREPARE AN INTOXICATION DEFENSE. WHEN HE DIDN'T TALK TO HIS OWN EXAPPRECIATE THAT HE HAD -- EXPERT THAT HE HAD RETAINED SPECIFICALLY BECAUSE HE WANTED TO CHALLENGE AT THE GUILT PHASE , BASED ON PTSD WHICH EVENTUALLY BECAME A VIETNAM SYNDROME OFFENSE , BECAUSE AS DR . WEITZ TESTIFIED AT THE EVIDENTIARY HEARING, HE DIDN'T FEEL AT THAT TIME THAT HE WAS DIAGNOSE POST-TRAUMATIC STRESS DISORDER AND THEREFORE ONCE THE JUDGE REFUSED TO LET IN THE EVIDENCE BASED ON A DIMINISHED CAPACITY AT THE GUILT PHASE , MR . KIRCHNER AND DR. WEITZ ESSENTIALLY FELT THAT THEIR DEFENSE WAS OVER. THEY HAD BLOWN IT AT THIS POINT.

JUSTICE: I JUST WANT TO DETERMINE WHAT THIS LAWYER KNEW AT THE TIME THAT YOU ASSERT THERE ARE SOME DEFAULTS IN PERFORMANCE .

CERTAINLY.

JUSTICE: DID HE KNOW THE LENGTH OF TIME BETWEEN THIS EVENT AND THE TIME THAT MR . REAVES ENCOUNTERED MR . HINTON, WHO APPARENTLY WAS THE ONLY EYEBALL WITNESS WITH REGARD TO THIS? DID HE KNOW THAT TIME PERIOD?

YES. HE DID KNOW THAT.

AND IT WAS MY UNDERSTANDING THAT MR. HINTON HAD PREVIOUSLY , I MEAN, NOT ONLY HAD DISAVOWED INTOXICATION BUT ALMOST WENT TO THE EDGE OF, WELL , HE SOLD DRUGS BUT HE IS NOT A USER . WE DIDN'T USE DRUGS TOGETHER. THAT HE SOLD IT AND THEN WON'T TO SAY AND MAKE SURE I UNDERSTAND, WENT ON TO SAY WHEN THIS LAWYER CAME IN, THAT MR . HINTON WAS , THERE WAS NOTHING TO INDICATE INTOXICATION. IS THAT WHERE HE CAME ON THE SCENE ?

THERE WAS CERTAINLY NEVER ANY CONVERSATION BASED ON KIRCHNER'S TESTIMONY BETWEEN HIM AND HINTON HAVING ANYTHING TO DO WITH DRUGS. HE SIMPLY SAID HE NEVER TALKED TO HINTON ABOUT THAT .

JUSTICE: THE TESTIMONY. I ASSUME HE HAD ACCESS TO THE FILE BECAUSE THERE HAD ALREADY BEEN A TRIAL.

SURE. HE HAD CONTACT WITH HINTON SEVERAL TIMES BEFORE THE SECOND TRIAL TO OK PLACE .

JUSTICE: THAT , IS MY RECITATION GENERALLY CORRECT OF THE STATUS OF MR . HINTON'S TESTIMONY AT THE TIME?

I THINK IT IS GENERALLY CORRECT, ALTHOUGH THERE IS SOME SUBSTANTIAL COMMENT ABOUT HIM ACTUALLY BEING INVOLVED IN SALE AND PREPARATION OF DRUGS WITH MR . REAVES OVER A SIGNIFICANT PERIOD OF TIME .

JUSTICE: NOT USE BUT JUST S ALE.

SOME USE. I WOULD SAY MINIMAL USE .

SO IF HE C OMES IN AT THAT STAGE AND THAT IS WHAT THE SUPPOSED ONLY WITNESS SAYS , THEN WE MUST, THEN , F IND INEFFECTIVE ASSISTANCE , BECAUSE HE DID NOT , HE WAS UNABLE TO PRO FFER OR DID NOT GO TO MR . HINTON TO GET HIM TO CHANGE HIS STORY?

NO. I DON'T THINK THAT IS - -

JUSTICE: AR EN'T WE THERENOW THAT HINTON HAS CHANGED HIS STORY?

I THINK SO.

JUSTICE: I AM TRYING TO UNDERSTAND WHERE THIS LAWYER WAS DEFICI ENT IN PERFORMANCE IF THAT IS WHAT HE WAS FACED WITH AND THIS IS THE PROBLEM A REA THAT WE ARE FIGHTING ABOUT.

I DON'T THINK IT IS THAT STATEMENT AL ONE IS THE POINT I WANT TO MAKE. THAT IS A ISSUE OBVIOUSLY, AS TO EXACTLY WHAT WAS HE RESPONSIBLE FOR DO ING IN THAT CIRCUM STANCE. MY ANSWER IS HE NEEDED TO AT L EAST HAVE TALKED TO HINTON IN THE CONTACT THAT HE WITH HIM AND THERE WERE AT LE AST A COUPLE OF CONTACTS, ABOUT THE WHOLE AREA OF DRUGS AND WHETHER OR NOT INTOXICATION WAS AN ISSUE , IF I N FACT THAT WAS EVEN HIS STEALTH DEFENSE.

JUSTICE: WHAT WAS NUMBER TWO?

NUMBER TWO WAS HE NEEDED TO TALK T O JACQUE GREEN , THE GIRLFRIEND, TO FIND OUT IF IN FACT THE DRUGS WERE THERE. IF IT WAS TRUE AND MR . REAVES WAS THERE , WHY NOT GET THE REMAINS THAT WERE THERE TESTED TO BOLSTER THE INTOXICATION DEFENSE BEFORE THE JURY? N UMBER THREE , TRY AND PROVIDE HINTON'S PR IO R STATEMENTS TO YOUR EXPERT , WHO YOU WANT TO TESTIFY AT THE GUILT PHASE , AND ASK THE EXPERT WHETHER OR NOT HE BELIEVES THAT HE WAS INTOXICATED AT THE TIME OF THE OFFENSE , AND PROVIDE NOT ONLY THOSE STATEMENTS FROM HINTON BUT ANY OF THE RESULTS FROM THE FORENSIC STESING OF -- TESTING OF THE DRUGS THAT WERE TAKEN FROM THE CRIME SCENE AND JACQUE GREEN.

JUSTICE: LE T'S ASS UME THAT THOSE WERE DRUGS , DOES THAT GO TO VOLUNTARY INTOXICATION AT THE TIME OF THE OFFENSE?

I THINK OBVIOUSLY THE ENTIRE PICTURE OF SOMEBODY SUBSTANCE ABUSE HIS TORY IF YOU ARE IN FRO NT OF A JURY , IS GO ING TO SU PPORT AN EVENTUAL AND'S BY HINTON IN WHICH HE SAYS HE WAS STRUNG-OUT OF HIS MIND AT THE TIME HE CAME TO MY DO ORAN HOU R OR SO AFTER THE OFFENSE , AND HE TOLD ME HE HAD USED ALL OF HIS DRUGS. WHATEVER HINTON HAS TO SAY. I THINK YOU HAVE TO LOOK AT THAT PACKAGE OF MATERIAL THAT COULD BE PRESEN TED TO THE JURY AS PART OF A VOLUNTARY INTOXICATION DEFENSE, IN ORDER TO MAKE THAT DETERMINATION. CHIEF I WANT TO REMIND YOU ARE SUBSTANTIALLY INTO YOUR REBUTTAL.

I THINK I WILL SIT DOWN AT THAT POINT, JUSTICE PARIENTE. THA NK YOU .

MAY IT PLEASE THE COURT. DEBORAH RESCIGNO ON BEHALF OF THE ATTO RNEY GENE RALS OFFICE. DEFENSE COUNSEL CA NNOT B E F OUND INEFFECTIVE IN THIS C ASE FOR NOT PRESENTING A VOLUNTARY INTOXICATION DEFENSE BECAUSE THE FACTS OF THIS CASE F LY IN THE FACE O F A VOLUNTARY INTOXICATION DEFENSE. THE DEFENDANT G AVE A 43-PAGE DETAILED CONFESSION OF THE CRIME HE RE, WHERE HE OUTLINED EXACTLY WHAT HAPPENED FROM THE TIME HE LEFT HIS GIRLFRIEND 'S HOUSE. I WANT TO POINT OUT TO THE COURT THAT

JACQUE GREEN LEFT HER HOUSE AT 7:00 P.M. . . AND THAT THE MURDER OF THE DEPUTY DID NOT OCCUR UNTIL 3:00 P. M., SO SHE WAS NOT IN THE HOUSE DURING ANY OF THE RELEVANT TIME PERIOD.

JUSTICE: WHAT TIME WAS THAT AGAIN?

SHE LEFT THE HOUSE AT 7:00 P.M. .

JUSTICE: AND THE MURDER OCCURRED AT?

SHORTLY AFTER 3:00 A .M. .

JUSTICE: AM.

HE HAD BEEN WATCHING FOOTBALL AT HER HOUSE AND FELL ASLEEP AND WHEN HE WOKE UP, HE WANTED MORE DRUGS. HE HAD RUN OUT. HE WAITED FOR HIS CAR TO GET HIS DRUGS STASHED AT HIS MOTHER'S HOUSE BUT BECAUSE JACQUE GREEN DIDN'T RETURN, HE GOT IMPATIENT AND DECIDED TO WALK UP TO THE ZIPY MART, WHICH WAS FOUR TENTHS OF A MILE THAT HE WALKED UP TO. AT THE ZIPY MART HE CALLED THE CAB COMPANY THREE TIMES AND GOT IMPATIENT WHEN THEY DID NOT COME AND BEFORE THAT HE BORROWED A QUARTER IN ORDER TO MAKE THE PHONE CALL, AND WHEN HE BECAME IMPATIENT HE DIALED 911 BUT HE HUNG UP BEFORE HE SPOKE TO ANYONE, TO GET A CAB. BECAUSE 911 HAD AN ADDRESS COME UP ON THE SCREEN, THEY DISMACHED DEPUTY -- THEY DISPATCHED DEPUTY RACZKOSKI. HE HAD INFORMATION ON MR. --

CHIEF JUSTICE: WHEN WAS THAT?

BETWEEN 3:00 A. M. AND 3:02.

CHIEF JUSTICE: ACCORDING TO THE DEFENDANT'S STATEMENT WHEN WAS THE LAST TIME THAT HE HAD USED DRUGS?

HE TOLD DR. WHITE HE -- DR. WEITZ THAT HE HAD USED DRUGS 30 MINUTES BEFORE GOING TO THE ZIPPY MART, AND HE ALSO FELL ASLEEP AND HE DIDN'T EXPLAIN HOW LONG HE WAS ASLEEP VERSUS THE DRUGS BUT THAT IS WHAT HE SAID. 30 MINUTES BEFORE. THE DEPUTY CALLS INTO 911 AND HAS WARRANT CHECK DONE ON MR. REAVES, WHICH COMES BACK CLEAN. HE THEN ASKED HIM WHY HE WAS THERE, AND DETERMINES THAT HE WAS THERE LOOKING FOR A CAB. SO HE CALLS BACK TO 911 AND HE ASKED THEM TO CALL A CAB FOR THIS GENTLEMAN. THAT IS THE WORDS THAT HE USED ON 911, AND THEN HE IS WAITING THERE WITH MR. REAVES. SO THE ENCOUNTER --

JUSTICE: THE INDICATION OF THE DISCUSSION BETWEEN THE OFFICER AND 911, THAT HE GIVES THAT THE DEFENDANT WAS OBVIOUSLY INTOXICATED, HIGH, OR?

NO. THAT IS ANOTHER POINT, YOUR HONOR. THERE IS ABSOLUTELY, DURING THIS ENCOUNTER BETWEEN REAVES AND DEPP ANY RACZKOSKI, THERE IS NOT ANY INDICATION TO THE DEPUTY THAT THERE IS ANYTHING WRONG WITH MR. REAVES. HE RESPONDS TO ALL OF HIS QUESTIONS. HE DOESN'T APPEAR TO BE INTOXICATED THERE. IS NO IS UP OR AND HE DOESN'T -- THERE IS NO SUTUPER AND THERE IS NO INDICATION THAT HE HAD ANYTHING WRONG. WHEN THE GUN FELL OUT, THE DEPP IF I -- THE DEPUTY PUT HIS FOOT ON THE GUN. MR. REAVES PICKED THE GUN UP AND PUT IT BY HIS THROAT AND HAD IT IN THE DEPUTY'S FACE, AND AT THAT POINT THE DEPUTY BACKED AWAY AND PLEADED NOT TO SHOOT HIM AND AS HE GOT PAST HIS CAR DOOR, HE TRIED TO GET -- PAST HIS CAR DOOR, HE TRIED TO GET HIS OWN GUN OUT AND WHEN HE TURNED TO RUN, HE SHOOTS HIM. MR. REAVES, TWO DAYS LATER, WAS ABLE TO GIVE A 43-PAGE STATEMENT WHERE HE DETAILED EVERY CONVERSATION THAT HE HAD WITH THE DEPUTY. HE

EVEN WAS ABLE TO NAME THE CODE THAT THE DEPUTY WAS USING WITH 911 TO GET ACROSS HIS INFORMATION.

BUT DIDN'T THE MENTAL HEALTH EXPERTS THAT WERE PRESENTED AT THE EVIDENTIARY HEARING, TESTIFY ESSENTIALLY THAT DESPITE THE FACT THAT HE COULD GIVE A DETAILED STATEMENT DOES NOT REALLY NEGATE THE FACT THAT HE COULD HAVE BEEN INTOXICATED AT THE TIME OF THIS OFFENSE?

RIGHT, BUT ALL OF THOSE EXPERT'S TESTIMONY WITH THE EXCEPTION OF DR. WEITZ, NONE OF THEIR TESTIMONY CAN BE CONSIDERED BY THIS COURT IN DECIDING WHETHER MR. KIRCHNER WAS INEFFECTIVE IN 1992, BECAUSE ALL OF THEIR TESTIMONY SAID THAT HE COULDN'T FORM SPECIFIC INTENT BASED ON THE COMBINED EFFECT OF THE ALCOHOL AND DRUGS AND HIS MENTAL DEFECT, AND THAT TESTIMONY WAS NOT ALLOWED IN 1992. THAT WAS NOT ALLOWED UNTIL BIAS CAME OUT IN 1995. THE LAW IN 1992 WAS CHESTNUT AND THIS COURT LAST WEEK IN THE JERMAINE FOSTER CASE, EXAMINED THAT SAME ISSUE. THERE WAS AN ISSUE THERE WHERE THERE WAS AN ALLEGATION OF INEFFECTIVENESS OF DEFENSE COUNSEL FOR NOT PRESENTING A VOLUNTARY INTOXICATION DEFENSE, AND THIS COURT OUTLINED THAT THE LAW IN EFFECT AT THE TIME WAS CHESTNUT, AND THAT COUNSEL COULD NOT BE DEEMED INEFFECTIVE FOR NOT ANTICIPATING A CHANGE IN THE LAW, A CHANGE THAT WOULD COME IN 1995 WITH BIAS, SO THE STATE SUBMITS THAT ALL OF EXPERTS THAT THE DEFENDANT PRESENTED, THEIR TESTIMONY COULD NOT HAVE BEEN CONSIDERED, COULD NOT HAVE BEEN USED BY COUNSEL IN 1992, BECAUSE ALL OF THEIR OPINIONS WERE BASED ON THE COMBINED EFFECT OF THE ALCOHOL, DRUGS AND MENTAL DEFECT. JUST JUST WE ARE GOING TO TALK --

JUSTICE: WE ARE GOING TO TALK ABOUT ALCOHOL THEN. MR. REAVES MAINTAINS THAT DEFENSE COUNSEL SHOULD HAVE TALKED WITH MR. HINTON, WITH THE GIRLFRIEND, TO DETERMINE THE EXTENT OF HIS INTOXICATION, SINCE OF COURSE IN HIS STATEMENT, HE DOES SAY SEVERAL TIMES THAT HE WAS HIGH WHEN THIS WAS ALL GOING ON, AND SO WOULDN'T A REASONABLE DEFENSE ATTORNEY HAVE CHECKED FURTHER INTO THE EXTENT OF HIS INTOXICATION?

THIS DEFENSE ATTORNEY DID CHECK. REGARDING MR. HINTON, MR. HINTON TESTIFIED AT THE FIRST TRIAL WHICH WAS HELD IN 1997. PRIOR TO HIS TESTIMONY, HE GAVE THREE STATEMENTS TO THE POLICE AND HE WAS DEPOSED. IN NONE OF THOSE STATEMENTS, DEPOSITION, OR HIS 1987 TESTIMONY, DID HE SAY THAT MR. -- IN HIS 1987 TESTIMONY DID HE SAY THAT MR. REAVES APPEARED INTOXICATED OR STRUNG-OUT OR ON COCAINE. HE SAID TO THE CONTRARY WHEN HE SHOWED UP AT HIS HOUSE, HE WAS FUNCTIONING NORMALLY, HIS SPEECH WAS NOT SLURRED, HE WAS IN FULL CONTROL OF ALL OF HIS FACULTIES. HE WAS ABLE TO TELL MR. HINTON, RECOUNT ALL OF THE DETAILS OF THE MURDER. HE TOLD MR. HINTON EXACTLY HOW IT WAS A NICE ENCOUNTER BETWEEN HIM AND THE DEPUTY UNTIL THE GUN FELL OUT. HE DESCRIBED FOR MR. HINTON HOW HE WAS ABLE TO WRESTLE THE GUN FROM THE DEPUTY, HOW HE HELD IT TO HIS THROAT, HOW THE DEPUTY BEGGED FOR HIS LIFE AND HOW HE THEN SHOT HIM.

IS THIS AT THE POINT WHERE HE MADE SOME STATEMENT TO THE EFFECT THAT IT WAS HIM OR ME?

HE TOLD MR. HINTON THAT HE SAID TO THE DEPUTY ONE OF US HAS TO GO, YOU OR ME. HE TOLD MR. HINTON. THAT WAS MR. HINTON'S TESTIMONY IN 1987. HE THEN REFUSED TO TESTIFY AT THE 1992 TRIAL, WHICH WAS THE SECOND TRIAL.

JUSTICE: HOW DID THAT REALLY COME ABOUT? HE JUST SAID I AM NOT GOING TO COME?

HE WAS CALLED IN BY THE JUDGE, AND THE JUDGE ASKED HIM NO LESS THAN TWELVE TIMES FROM THE JUDGE INFORMED HIM THAT HE COULD NOT TAKE THE FIFTH AMENDMENT PRIVILEGE BECAUSE HE HAD BEEN SUBPOENAED AS A WITNESS AND HE WAS REQUIRED TO TESTIFY. HE TOLD THE JUDGE TWELVE TIMES, I KNOW NOTHING. I DON'T CARE. YOU CAN'T DO ANYTHING TO

ME. I AM ALREADY SERVING A 30-YEAR SENTENCE. I KNOW NOTHING AND I WILL NOT TESTIFY. THE JUDGE ENDED UP HOLDING HIM IN DIRECT CRIMINAL CONTEMPT OF COURT AND ADDED SIX MONTHS TO HIS SENTENCE AND RULED THAT HE WAS UNAVAILABLE BECAUSE HE WAS WILLFULLY REFUSING TO TESTIFY. AT THAT POINT HIS TESTIMONY FROM THE 1987 TRIAL WAS READ INTO THE RECORD AND NOW IT WASN'T UNTIL ALL THESE YEARS LATER IN 1999 THAT HE COMES FORWARD FOR THE FIRST TIME WITH AN AFFIDAVIT AND SAYS THAT, WHEN REAVES CAME TO HIS HOUSE HE APPEARED STRUNG-OUT AND AS THOUGH HE HAD BEEN SMOKING COCAINE.

CHIEF JUSTICE: HOW IS THAT AFFIDAVIT, I AM HAVING A LITTLE TROUBLE ABOUT WHY THE JUDGE DIDN'T ALLOW HIM TO TESTIFY AT THE EVIDENTIARY HEARING. WAS THIS AFFIDAVIT PROFFERED AS NEWLY-DISCOVERED EVIDENCE? THAT IS A RECANTATION OF HIS PRIOR TESTIMONY? SHOULDN'T IT HAVE BEEN CONSIDERED IN THAT WAY?

THE AFFIDAVIT WAS PROFFERED AND THE JUDGE ACTUALLY DID CONSIDER IT, AND WHAT THE JUDGE FOUND HE CONSIDERED THE AFFIDAVIT, HE ALLOWED, I BELIEVE IT WAS MISS DONNA HOE TO GIVE A PROFFER -- MISS DONAHO TO GIVE A PROFFER ON THE RECORD. SHE TOLD THE COURT SHE HAD JUST COME BACK FROM SPEAKING WITH MR. HINTON AT THE PRISON, AND BASICALLY THE SUM AND SUBSTANCE OF WHAT HE TOLD HER AT THE PRISON WAS IN ACCORDANCE WITH THE AFFIDAVIT, SO THE COURT SAID SHE COULD PROFFER THAT, THAT SHE WASN'T REQUIRED TO GET A SWORN STATEMENT FROM HIM, THAT SHE COULD PROFFER THAT.

CHIEF JUSTICE: WAS IT CONSIDERED AS PART OF A NEWLY-DISCOVERED EVIDENCE CLAIM BECAUSE IT COULDN'T BE INEFFECTIVE ASSISTANCE IF HE WAS JUST NOT RECANING.

THEY WERE SHOWING IT AS A PREJUDICE PRONG.

CHIEF JUSTICE: SO IT WAS NOT --

NO, NOT NEWLY-DISCOVERED EVIDENCE, AND AT THE FEBRUARY 23 HEARING, WITH WHERE THE JUDGE RULED THAT HE WOULD NOT GRANT THE MOTION TO HAVE MR. HINTON COME TESTIFY, THEY SAID THAT THEY WERE RELYING UP ON MR. HINTON TO SHOW THE PREJUDICE PRONG FOR FAILURE TO PRESENT THE VOLUNTARY INTOXICATION DEFENSE.

CHIEF JUSTICE: OTHER THAN THAT WHAT YOU ARE SAYING --

THE JUDGE SAID HOW COULD I CONSIDER MR. HINTON'S TESTIMONY AS TO WHETHER COUNSEL WAS INEFFECTIVE IN 1992 BECAUSE BECAUSE MR. HINTON MADE HIMSELF AVAILABLE IN 1992 AND REFUSED TO TESTIFY, BUT HE ALLOWED THEM TO SUBMIT AND CONSIDER THE PROFFER.

CHIEF JUSTICE: AND THE IDEA THAT COUNSEL THEN SHOULD HAVE TALKED TO HINTON AND TRY TO GET HIM TO CHANGE HIS TESTIMONY THAT HE HAD ALREADY GIVEN IN 1987? THAT WAS WHAT WAS BEING ARGUED?

THEY WERE, I GUESS, ARGUING THAT THIS AFFIDAVIT -- THEY WERE, I GUESS, ARGUING THAT THIS AFFIDAVIT NOW SHOULD BE CONSIDERED AS EVIDENCE TO SHOW THAT WHEN MR. REAVES SHOWED UP AT THE HOUSE NOW, HE WAS STRUNG-OUT, WHICH WAS A DIRECT CONTRADICTION TO PREVIOUS TESTIMONY.

CHIEF JUSTICE: I AM TRYING TO FIGURE OUT HOW THAT GOES TO AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

RIGHT. THEY WERE RELYING IT TO PROVE THEIR PREJUDICE, THE PREJUDICE PRONG OF THE CLAIM THAT, HAD THEY BEEN ABLE TO SUBMIT HYPOTHONE'S NOW RECANTED OR DIFFERENT -- SUBMIT HINTON'S NOW RECANTED OR DIFFERENT TESTIMONY THAT THAT THE RESULT OF THE

TRIAL WOULD HAVE BEEN DIFFERENT , BUT THE COURT FOUND IT WAS INCREDIBLE.

JUSTICE: AREN'T THEY ALSO SAYING THAT, IF DEFENSE COUNSEL HAD ACTUALLY TALKED TO MR . HINTON , THAT THIS IS WHAT THE DEFENSE ATTORNEY WOULD HAVE FOUND, WHICH WOULD HAVE BOLSTERED MR . REAVES 'S STATEMENTS ABOUT INTOXICATION. I MEAN , I THINK THEY ARE USING IT AS I SEE IT FOR BOTH PRONGS OF THIS INEFFECTIVE ASSISTANCE.

THEY HAVE NO SUPPORT FOR THAT ARGUMENT , BECAUSE THERECORD SHOWS FROM THE 1992 TRIAL THAT MR . KIRCHNER ASKED IF HE COULD GO OUT AND TALK TO MR. HINTON TO SEE IF HE COULD GET HIM TO COME AND AGREE TO TESTIFY AND HE DID GO OUT TO TALK TO HIM AND HE WAS NOT GOING TO TESTIFY FOR ANYONE. HE DIDN'T WANT TO HAVE ANYTHING TO DO WITH TESTIFYING.

CHIEF JUSTICE: IS THAT WHAT MR . KIRCHNER SAID THAT HE DID TRY TO GO TALK TO MR. HINTON BACK IN 1992?

RIGHT. I WANT TO CORRECT THAT. I AM NOT SURE IF THAT WAS ASKED OF HIM AT THE EVIDENTIARY HEARING BUT THE RECORD IN THE 1992 TRIAL SHOWS THAT HE WAS ALLOWED TO GO OUT AND TALKED TO HIM AND BASICALLY THE RESULT WAS HE CAME BACK AND HE WAS NOT GOING TO TESTIFY.

JUSTICE: HE REFUSED TO TESTIFY. AS I UNDERSTAND MR. REAVES'S ARGUMENT IS THAT , EVEN PRIOR TO THAT POINT THAT IF HE HAD REALLY TALKED WITH MR. HINTON, ASSUMING MR . HINTON WOULD TALK TO HIM, THAT HE COULD HAVE GOTTEN THIS INFORMATION. THAT IS WHAT I SEE AS PART OF THEIR ARGUMENT FOR FAILURE OF DEFENSE COUNSEL TO THOROUGHLY INVESTIGATE THE CLAIM .

A GAIN , THE WHAT THAT , WHAT THAT RECANTED TESTIMONY COULD BE USED FOR PRACTICAL PURPOSES, THE COURT SAID THAT IT CONSIDERED IT INCREDIBLE AND IT WOULD NOT RELY UPON IT IN SUPPORTING A VOLUNTARY INTOXICATION DEFENSE , BECAUSE HE HAD MADE HIMSELF VOLUNTARILY UNAVAILABLE FOR THE TRIAL.

JUSTICE: WHAT DISCUSSIONS DID DEFENSE COUNSEL , EITHER COUNSEL DIRECTLY WITH MR . HINTON OR THROUGH THE INVESTIGATOR DID THE PRIOR COUNSEL IN THE FIRST TRIAL HAVE WITH MR . HINTON? I AM TRYING TO FIGURE OUT WHAT MR . KIRCHNER WOULD HAVE HAD AVAILABLE TO HIM, OTHER THAN THE DEPOSITION TESTIMONY AND THE STATEMENT TO LAW ENFORCEMENT, THAT EITHER THROUGH PRIOR COUNSEL OR AN INVESTIGATOR TALKING TO HINTON. WAS ANY OF THAT DONE?

WHAT THE RECORD SHOWS IS THAT MR . KIRCHNER TOOK OVER , AND HE HAD EXTENSIVE DISCUSSIONS WITH FIRST TRIAL COUNSEL MR . BARNES , REGARDING STRATEGY. I WANT TO POINT OUT TO THE COURT THAT IN THE FIRST TRIAL, THE DEFENSE WAS LACK OF PREMEDITATION , A VOLUNTARY INTOXICATION DEFENSE WAS NOT RAISED THERE. HOWEVER , AN INSTRUCTION WAS GIVEN BECAUSE THERE WAS SIMILAR EVIDENCE THAT HAD COME IN AS IT DID IN THIS TRIAL , ABOUT REAVES'S POSSESSION OF 4.4 GRAMS OF COCAINE AT THE TIME OF ARREST AND TESTIMONY ELICITED THAT HE WAS VERY SKINNY LIKE A CRACK ADDICT , WHEN HE WAS ARRESTED. SO MR. KIRCHNER CONSULTED WITH MR . BARNES EXTENSIVELY REGARDING THE FIRST TRIAL .

JUSTICE: BARNES TALKED TO HINTON?

HE OBVIOUSLY TALKED TO HIM ALTHOUGH IT IS NOT REFLECTED IN THIS RECORD AND AT THE 1987 TRIAL.

JUSTICE: FOR THE STATE?

YES. NOT THE DEFENSE AND THAT IS WHEN HE SAID WHEN REAVES CAME TO HIS HOUSE HE WAS NOT SLURING HIS WORDS , DID NOT APPEAR TO BE INTOXICATED AND WAS IN CONTROL OF HIS FACULTIES .

JUSTICE: BUT THE STATE DEPOSED HIM?

RIGHT.

CHIEF JUSTICE: IT IS VERY CLEAR IN THIS CASE THAT AT THE VERY LEAST WHAT WAS GOING ON WAS SOMEBODY WHO WAS PROBABLY AN ADDICT WHO WAS IN A MODE OF NEEDING TO GET DRUGS , AND WAS THAT PICTURE PRESENTED IN 1992? I MEAN , BECAUSE THEY WERE GOING FOR AN EXCUSEABLE HOMICIDE, BUT --

WELL , DEFENSE COUNSEL SAID THAT HIS PRIMARY DEFENSE WAS EXCUSEABLE HOMICIDE BUT HE SAID HE DIDN'T IGNORE THE DEFENSE OF VOLUNTARY INTOXICATION. HE RELIED UPON IT AS A FALLBACK DEFENSE. IT WAS NEVER DISPUTED BY THE STATE , AND THERE WAS TESTIMONY ADMITTED THAT REAVES WAS A CHRONIC DRUG ABUSER BUT FOR THE VOLUNTARY INTOXICATION, IT IS NOT ENOUGH TO SHOW USE OF INTOXICANTS OR THE DEFENDANT IS A DRUG ADDICT. YOU HAVE TO SHOW THE LEVEL OF INTOXICATION AT THE TIME OF THE CRIME, SO THAT IT WOULD BE POSSIBLE TO NEGATE THE SPECIFIC INTENT TO KILL, AND THAT IS WHAT IS CRUCIAL EVIDENCE THAT IS MISSING , EVEN FROM THE EVIDENTIARY HEARING. THEY WERE NOT ABLE TO PRESENT ANYTHING OTHER THAN REAVES'S SELF-SERVING STATEMENTS IN HIS CONFESSION AS TO THAT CRITICAL ISSUE OF THE LEVEL OF INTOXICATION AT THE TIME OF THE CRIME.

CHIEF JUSTICE: WHAT TESTING IS BEING REQUESTED?

THE TESTING IS BEING REQUESTED ON THE GIRLFRIEND JACQUE'S HOUSE, THERE WAS FOUND I BELIEVE AN EMPTY WINE BOTTLE, A FEW ASHTRAYS , A MARIJUANA CIGARETTE OR ROACH , AS THEY REFER TO IT , AND THEN THEY ALSO RETRIEVED REAVES'S CLOTHING THAT HE WAS WEARING AT THE TIME OF THE MURDER, RED SHORTS AND A WHITE T-SHIRT . THERE WERE HAIRS FOUND ON THAT AND THEY WERE REQUESTING --

CHIEF JUSTICE: HOW DOES THAT RELATE TO THE VOLUNTARY INTOXICATION?

THAT IS WITH THE TRIAL JUDGE. THE TRIAL JUDGE SAID I AM NOT GOING TO REQUIRE TESTING BECAUSE IT IS GOING TO SHOW MAYBE THE PRESENCE OF METABOLITES , EVEN THE HAIR THEIR OWN WITNESS , DR . MASH SAID YOU CAN'T TELL THE DATE OF INGESTION OF DRUGS FROM THE HAIR OR THE LEVEL OF QUANTITY OF IT. ALL YOU CAN TELL IS WHETHER THERE WERE DRUGS TAKEN IN A WINDOW OF TIME, MAYBE UP TO 30 DAYS.

JUSTICE: WHAT WAS THE TESTIMONY OF THE DEFENSE LAWYER AT THE EVIDENTIARY HEARING, ABOUT THOSE CONVERSATIONS HE HAD WITH -- ABOUT THE CONVERSATIONS HE HAD WITH HIS OWN CLIENT ABOUT HIS CLIENT'S STATE OF INTOXICATION OR WHATEVER, AT THE TIME OF THE OFFENSE?

HE KNEW FROM THE BEGINNING OF THE CASE WHEN HE TOOK THIS CASE OVER FROM MR . BARNES , HE KNEW THAT REAVES WAS A CHRONIC DRUG ABUSER, HE SAID. HE KNEW THAT THERE HAD BEEN DRUGS TAKEN --

JUSTICE: I AM NOT ASKING WHAT HE KNEW. I AM ASKING ABOUT HIS CONVERSATION WITH HIS CLIENT. DID HE TESTIFY THAT HE TALKED TO HIS CLIENT ABOUT HIS STATE OF INTOXICATION OR NOT NONINTOXICATION OR DRUG USE OR WHATEVER?

HIS TESTIMONY WAS THAT HE TALKED TO HIM ABOUT HIS VOLUNTARY INTOXICATION AND I DON'T BELIEVE HE COULD RECALL THAT HE HAD OR HADN'T. HE RECALLED THAT HE DISCUSSED THE BEST DEFENSE THAT HE HAD WITH HIS CLIENT, WHICH HE CAME UP WITH MR. WEITZ.

JUSTICE: DID HE SAY HE TALKED TO THE CLIENT AND ASKED HIM ABOUT THE CIRCUMSTANCES OF HIS CRIME AND ASKED HIM WHETHER HE WAS STRUNG-OUT ON DRUGS? IN OTHER WORDS --

I DON'T BELIEVE IT WAS ON THE RECORD THAT HE DID THAT. I BELIEVE THAT IS WHAT HIS TESTIMONY WAS. HE WASN'T ABLE TO GIVE ANY SPECIFICS ON THAT.

JUSTICE: THE TRIAL COURT SAID THAT HE DISCUSSED THE USE OF COCAINE AROUND THE TIME OF THE INCIDENT BUT DID NOT RECALL DISCUSSING THE OPPOSITE OF VOLUNTARY INTOXICATION AS A DEFENSE.

I AM SORRY.

JUSTICE: HOW DOES THAT FIT INTO THE HEARING, IF YOU CAN ELABORATE?

HE DID SAY HE DISCUSSED VOLUNTARY INTOXICATION BUT THE USE OF COCAINE TAKEN ON THE DAY, AND THERE WAS NO DISPUTE THAT REAVES HAD TAKEN DRUGS ON THE DAY. THE RELEVANT QUESTION WAS HIS LEVEL OF INTOXICATION AT THE TIME. THERE WAS ALSO TESTIMONY IN THE RECORD THAT AT THREE O'CLOCK IN THE AFTERNOON PRECEDING THIS HE HAD HIS CAR BROKEN DOWN SOMEWHERE IN EITHER GIFFORD OR ZERO BEACH AND HE WAS -- OR VEER' BEACH, AND HE WAS -- OR VERO BEACH, AND MR. FREDELL, WHO HELPED HIM, SAID THERE WAS NO INDICATION OF DRUGS OR INTOXICATION ON THAT DAY, AND HE WAS ABLE TO HELP HIM FIX HIS CAR AND GIVE HIM DIRECTION WHERE HE NEEDED TO NEGOTIATION WHICH IS ALSO PART AND PARCEL THAT REAVES HAD EXCELLENT RECOLLECTION OF EVERY DETAIL OF WHAT HAPPENED DURING THIS CRIME, WHICH CUTS AT A VOLUNTARY INTOXICATION DEFENSE.

CHIEF JUSTICE: IT WAS TOUCHED ON EARLIER ABOUT HIM CALLING 911 IN ORDER TO GET A TAXI. IS IT, WAS THERE ANY TESTIMONY ABOUT WHETHER LAW ENFORCEMENT WILL JUST RUT I AM LY RESPOND -- ROUTINELY RESPOND AND ORDER TAXI FOR A PERSON THAT OTHERWISE IS IN A PROPER MENTAL STATE, TO LET THEM GET A RIDE HOME?

THE 911 OPERATOR TESTIFIED THAT IT IS THEIR POLICY TO SEND OUT, IF THEY HAVE A HANG-UP CALL ON 911, AS SOON AS A 911 CALL COMES IN, THE ADDRESS COMES UP ON THE SCREEN, SO IT IS THEIR POLICY TO DISPATCH A DEPUTY BECAUSE IT COULD BE THAT A PERSON IS IN TROUBLE AND THEY ARE JUST NOT ABLE TO COMMUNICATE THAT, SO THAT IS THEIR POLICY THAT THEY GO, AND HE DID, AND THE ZIPPY MART WAS CLOSED AT THE TIME AND MR. REAVES WAS THERE AND THAT IS WHEN HE ENCOUNTERED HIM BECAUSE HE WAS ON ROAD PATROL. GETTING BACK TO THE OTHER DETAILS THAT REAVES WAS ABLE TO REMEMBER, I WANT TO POINT OUT THAT HE WAS ABLE TO DRAW A DIE GRAHAM OUTLINING THE LOCATION OF THE ZIPPY MART, WHERE THE DUMPSTER WAS, WHERE THE CAR WAS PARKED. HE REMEMBERED, THIS IS HOW EXTENSIVE HIS MEMORY AND RECOLLECTION OF THE NIGHT OF THE CRIME WAS. VIRTUALLY UNDERCUTTING ANY VOLUNTARY INTOXICATION DEFENSE, AND --

CHIEF JUSTICE: YOU ARE OUT OF TIME. I AM SORRY.

THANK YOU. WE ASK THAT THE COURT AFFIRM THE DENIAL OF THE. THANK YOU.

CHIEF JUSTICE: REBUTTAL.

CONSIDER THE SCENE. IT IS THREE A.M. IN THE MORNING, A TELEPHONE BOOTH OUTSIDE A SERVICE STATION ZIPPY MART THAT IS ALREADY CLOSED. I THINK THAT TELLS YOU SOMETHING ABOUT THE SET AND SETTING OF THIS CRIME. AS TO THE AFFIDAVIT OF MR. HINTON, I WANTED TO

POINT OUT TO THE COURT THAT THAT WAS ATTACHED TO THE 3.850 WHICH WAS SUMMARILY DENIED BY THE JUDGE IN THIS CASE BEFORE THIS COURT SENT THE CASE BACK FOR THE VERY LIMITED EVIDENTIARY HEARING ON THE VOLUNTARY INTOXICATION ISSUE, SO THE QUESTION AS TO THE EVIDENTIARY REASONS FOR ATTACHING THE 3.850, THAT NEW AFFIDAVIT FROM MR. HINTON, GO BACK TO THE ORIGINAL 3.850. IT SORT OF OUTSIDE THE CONTEXT OF THE NARROW ISSUE THAT THE COURT BELOW WAS HEARING.

CHIEF JUSTICE: WELL, DID YOU IN THE 3.850, WAS THERE A SEPARATE CLAIM OF NEWLY-DISCOVERED EVIDENCE? IN OTHER WORDS, WAS THAT, I MEAN, YOU ARE A SEASONED POSTCONVICTION ATTORNEY. WAS THAT PLEADING MEANT TO OFFER HINTON'S AFFIDAVIT AS NEWLY-DISCOVERED EVIDENCE OF REANTATION?

SINCE THIS WAS AN OLD RULE CASE, MY RECOLLECTION IS AT THE TIME WE FILED IT, THAT WAS CERTAINLY OUR INTENT. I WOULD HAVE TO GO BACK AND ACTUALLY --

CHIEF JUSTICE: THAT WOULD BE BRIEFS THAT YOU WOULD HAVE STATED BACK THE FIRST TIME THAT WE HAD THIS CASE THAT THE TRIAL COURT ERRED IN SUMMARILY DENYING A NEWLY-DISCOVERED EVIDENCE CLAIM?

AGAIN, I HAVE TO GO BACK AND LOOK AT THE PLEADING YOUR HONOR. I HONESTLY DON'T REMEMBER. AS TO THE FINDINGS OF THE COURT, THERE WAS NO FINDING BY THE COURT THAT MR. HINTON'S STATEMENT WAS INCREDIBLE. THAT IS NOT IN THE ORDER ANYWHERE, AND THE STATE INDICATED THAT HE HAD FOUND IT TO BE INCREDIBLE. THAT SIMPLY NOT TRUE. AS TO THE QUESTION OF TALKING TO HINTON, THE MOST IMPORTANT THING TO RECALL IS THAT THE TESTIMONY BY MR. KIRCHNER WAS THAT HE DIDN'T TALK TO MR. HINTON ABOUT DRUG USE, ABOUT INTOXICATION, OR ABOUT ANYTHING RELATING TO THAT.

JUSTICE: YOU SEEM, THERE ARE TWO THINGS GOING ON HERE THAT I AM HAVING DIFFICULTY UNDERSTANDING YOUR SIDE OF IT. ONE IS THAT YOU ARE SAYING COUNSEL WAS DEFICIENT IN NOT TALKING TO THE GIRLFRIEND, AND YET IN YOUR OUTLINE OF WHAT THE GIRLFRIEND HAS TO SAY, THAT SHE DIDN'T HAVE ANYTHING TO SAY ABOUT HIS INTOXICATION. AND IN TALKING ABOUT HIM BEING DEFICIENT IN NOT TALKING TO MR. HINTON, IT APPEARS THAT MR. HINTON'S ACTUAL TESTIMONY BACK AT THE TIME OF THE FIRST TRIAL AND GIVING A DEPOSITION, WAS THAT HE WAS NOT STRUNG-OUT OR WHATEVER, SO I AM HAVING SOME DIFFICULTY IN TERMS OF THESE ALLEGATIONS AS FAR AS THOSE TWO WITNESSES ARE CONCERNED, AS TO WHAT AT THE TIME, WHAT PREJUDICE YOU COULD ESTABLISH.

IT WAS CERTAINLY ENOUGH EVIDENCE IN HINTON'S DEPOSITION AND THREE PRIOR STATEMENTS, THAT COUNSEL DEFINITELY SHOULD HAVE PROVIDED THAT INFORMATION TO DR. WEITZ, IF HE HAD ANY INTENTION OF PRESENTING A VOLUNTARY INTOXICATION CASE AT THE GUILTY PHASE, BECAUSE DR. WEITZ HAS TESTIFIED HE WOULD HAVE SAID THAT HE WAS VOLUNTARILY INTOXICATED, AND HE DIDN'T EVEN HAVE THE STATEMENTS FROM HYPOTHON THAT I BELIEVE --

JUSTICE: ISN'T THERE DIFFICULTY WITH DR. WEITZ'S TESTIMONY, BECAUSE WHAT IS PREVENTING HIM IF HE KNEW ALL OF THIS AND HAD ENOUGH TO GO ON BY THAT, AS OPPOSED TO COUNSEL ASKING HIM ABOUT THAT, OF NOT HIM SELF SAYING, OKAY, THAT WHAT YOU HAVE HERE IS AN INTOXICATED PERSON THAT APPARENTLY WAS ACTING ON THE BASIS OF THE INFLUENCE OF THESE DRUGS AND ALCOHOL. I AM HAVING TROUBLE WITH WEITZ SAYING --

THAT IS A DEFICIENCY ON THE PART OF THE EXPERT FOR SURE. NOW, WHOSE RESPONSIBILITY ULTIMATELY IT IS, I THINK IT IS ULTIMATELY COUNSEL'S RESPONSIBILITY.

JUSTICE: REALIZING YOUR TIME IS FAST EXPIRING.

SURE.

JUSTICE: I AM CONCERNED WITH WHETHER OR NOT COUNSEL WAS QUESTIONED , EITHER INVESTIGATION BEFORE COMING TO THE EVIDENTIARY HEARING OR AT THE EVIDENTIARY HEARING , ABOUT HIS DISCUSSIONS WITH HIS CLIENT. IN OTHER WORDS THAT THE FIRST SOURCE OF INFORMATION OR THE MOST DIRECT SOURCE OF INFORMATION ABOUT SOMETHING LIKE THIS, ORDINARILY WOULD COME FROM HIS CLIENT. IN OTHER WORDS I AM YOUR LAWYER. YOU HAVE GOT TO TELL ME FRANKLY , WHAT HAPPENED AND WHAT YOUR CONDITION WAS. NOW, WHAT IS THE EVIDENCE ABOUT THE LAWYER'S COMMUNICATION WITH HIS CLIENT?

I THINK HIS TESTIMONY INDICATES THAT HE DID NOT HAVE THE KIND OF INTERACTIVE DISCUSSION ABOUT VOLUNTARY INTOXICATION WITH HIS CLIENT THAT IS REQUIRED BY THE ABA GUIDELINES AND RULE 1.0.5 IN THE 2003 VERSION. IT SIMPLY DIDN'T HAPPEN, AND THAT IS WHY I THINK THAT HIS STORY ABOUT THE STEALTH VOLUNTARY INTOXICATION DEFENSE ALONG WITH SOME OF THE OTHER THING THAT IS I HAVE POINTED OUT , SIMPLY DOESN'T HOLD WATER.

CHIEF JUSTICE: THANK YOU VERY MUCH.