

SUPREME COURT OF FLORIDA
CASE NO.: 94,421

JULIO MORA,

Appellant/Defendant,

vs.

STATE OF FLORIDA,

Appellee/Plaintiff.

APPELLANT'S SUPPLEMENTAL BRIEF

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FACTS

A. Introduction.

The court has asked for briefing on the issue of Dr. Mora's request for a jury instruction on involuntary intoxication.

B. Facts.

As the State has observed, the issue arose during the guilt phase charge conference in which Dr. Mora, acting as co-counsel, verbally requested a charge to the jury on involuntary intoxication.

THE COURT: ...That would be voluntary intoxication, 3.04(G)

THE DEFENDANT: Involuntary, Your Honor.

THE COURT: There is no such thing. It's voluntary.

THE DEFENDANT: The intoxication with a deadly-with a knife, and the gasses, isn't that voluntary [sic.] intoxication?

THE COURT: First of all, there is no allegation with regard to the gasses the night before this offense, nor that they were hallucinogenic --

THE DEFENDANT: No, no.

THE COURT: Excuse me. Would you please be patient. The intoxication is based upon all the pills that you claim that you took that morning.

THE DEFENDANT: Yeah, it's medication.

THE COURT: Pills, right.

THE DEFENDANT: It's not voluntary.

THE COURT: No, no, no, you took them. That's

voluntary.

THE DEFENDANT: *But it's also the night before. I was given the deadly gasses. It was here.*

THE COURT: *It's 3.04G, voluntary intoxication. It would be by the use of drugs.*

THE DEFENDANT: *There is no involuntary intoxication.*¹

THE COURT: *That's basically correct.*

THE DEFENDANT: *I think it is.*

THE COURT: *I am glad you do. (Tr. 2548-2549) (Emphasis supplied).*

A voluntary intoxication instruction was read to the jury, (R. 1128, Tr. 2790-2791), as was an insanity instruction. (R.1126-1127, Tr. 2789-2790). The insanity instruction contained the instruction on hallucinations and delusions. (**Id.**). Counsel renewed all prior objections to the instructions at the conclusion of the reading of the instructions to the jury. (Tr. 2806).

Dr. Mora's testimony about the infusion of the poison gasses into his apartment on the night before the shootings has been recounted at length in his previous briefs and is found in the record at Tr.2101-2110. The testimony about other gassing attacks

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Given the acrimonious exchanges between Judge Backman and Dr. Mora throughout the record, it's more likely that the phrase: "There is no involuntary intoxication" was a question to the court rather than a statement by Dr. Mora of agreement with the court's rejection of his request for the instruction and it is also more likely that Dr. Mora's statement: "I think it is" was an expression of his belief that an involuntary intoxication defense existed in this case rather than an expression of agreement with the court.

on Dr. Mora by Dr. Rudolph and others is at Tr. 2050-2053 [Dr. Mora]; Tr. 1436-1446 [Detective Mangifesta]; Tr. 1545-1569 [Loretta Palis]; Tr. 1529-1532 [Manuel Alonso]; Tr. 1709-1711 [Hallandale Police Officer Villanueva]; Tr. 1509-1514, 1539-1540 [Hallandale Police Department Detective Davis]; and, Tr. 1640-1643 [Officer Judith Waldman].

Dr. Ceros-Livingston believed that Dr. Mora was delusional and suffered from visual and olfactory hallucinations. (Tr. 1570-1582, 1585-1586, 1602, 1611-1612). Dr. Macaluso believed that Dr. Mora was actively delusional at the time of the shootings and that Dr. Mora believed that he was acting in self-defense. Dr. Macaluso noted Dr. Mora's previous complaints about being gassed, which Dr. Macaluso viewed as a product of Dr. Mora's mental disorder. (Tr. 1644-1656, 1664-1667, 1684-1689). Dr. Stock testified:

His delusional system was such that it made it correct for him to engage in this behavior because he was being threatened, because somebody was going to kill him, it was, therefore, appropriate for him to become violent back.

He believed that he was justified that it wasn't wrong to do this because so many horrible things have been going on against him for years, they were trying to kill him by gassing him, shooting at him, running him off the road and all these other alleged events that he was justified in his behavior.

... I think this was a reaction to the circumstances around him that the events, these cascading events happened so quickly, and his perception of reality was so distorted, that once it started, it was just going to evolve terribly the way that it did. (Tr. 1763-1764).

Dr. Stock observed that throughout the years Dr. Mora had

filed police reports and lawsuits, which Dr. Stock thought were expressions of Dr. Mora's disease, claiming that others, including the FBI, were breaking into his apartment, gassing him, sending laser beams at him, disrupting his life, and stealing from him. Dr. Stock believed that the video tape of Dr. Mora's apartment was consistent with a long-standing paranoid delusional disorder as was Dr. Mora's purchase of items to help him ward off the gas attacks. Dr. Stock also relied on Dr. Rudolph's description of Dr. Mora as delusional in a letter. (Tr. 1737-1747).

In his personal closing argument to the guilt phase jury Dr. Mora asserted that he was gassed.

Number one before that. I apologize, everything that I say, what I feel in my home, what I feel there, I don't think that anyone knows but me, and I believe that was totally true. I was the one who was here and it is true that the gas was in my home. It was not an invention. I was not crazy. I saw what happened in the room. What happened in the room was not an invention, it was the truth. And people can say whatever they want to say about that, but I am telling you what it is, what happened. (Tr. 2707).

Mr. Colleran in closing depicted Dr. Mora's belief that he was being gassed as an expression of his mental disorder. (Tr. 2625, 2631-2636, 2642-2644, 2655, 2664).

SUMMARY OF ARGUMENT

Dr. Mora's request for the involuntary intoxication instruction should have been granted. There was evidence in the record through the testimony of Dr. Mora of the repeated gas attacks by Dr. Rudolph and his henchmen, including a gas attack on

Dr. Mora at his apartment during the night immediately before the shootings. While the rational defense in this case, supported by the evidence, especially the overwhelming and uncontradicted historical evidence, was that Dr. Mora suffered from a severe paranoid personality disorder that created for him a world in which he was the victim of unrelenting life-threatening attacks from Dr. Rudolph, Dr. Mora tenaciously held to the belief that he was at all times mentally intact and that he was justifiably defending himself from his persecutors. Dr. Mora's request for the involuntary intoxication instruction was entirely consistent with events as he perceived them. As supported by citations below, the instruction is proper in a case: "when [one] has become intoxicated through the fault of another, by accident inadvertence, or mistake on his own part, or because of a physiological or psychological condition beyond his control." Dr. Mora's oral request for the instruction was rejected by the court out-of-hand and, because of that rejection, Dr. Mora would have no reason to follow up with a written instruction. The objection was adequately preserved. The failure of the court to give the instruction cannot be harmless error.

ARGUMENT

POINT I

THE COURT SHOULD HAVE INSTRUCTED THE JURY ON THE ISSUE OF INVOLUNTARY INTOXICATION. THERE WAS NO WAIVER ON THIS RECORD. THE ERROR WAS PREJUDICIAL.

Once Dr. Mora was in the case as his own cocounsel, the court was duty bound to treat him accordingly and give the appropriate deference to Dr. Mora's personal theories of defense.

A. Dr. Mora was entitled to the instruction.

Dr. Mora was entitled to have the jury instructed on the applicable law when there was evidence to support a verdict in his favor, particularly where, as here, the "defenses concern either the defendant's innocence or their legal excuse in committing a crime." Palmer v. State, 397 So.2d 648, 652 (Fla. 1981). Boswell v. State, 610 So.2d 670 (Fla. 4th DCA 1992).

B. Involuntary Intoxication is a defense in this case.

Involuntary intoxication is a defense "when [one] has become intoxicated through the fault of another, by accident inadvertence, or mistake on his own part, or because of a physiological or psychological condition beyond his control." Brancaccio v. State, 698 So.2d 597, 599 (Fla. 4th DCA 1997) rev. denied 705 So.2d 10 (Fla. 1997) (Emphasis added); Carter v. State, 710 So.2d 110 (Fla. 4th DCA 1998); Devers-Lopez v. State, 710 So.2d 110 (Fla. 4th DCA 1998); Boswell v. State, *supra*. The standard insanity instruction is not a substitute for the involuntary intoxication instruction.

Brancaccio v. State, supra., 698 So.2d at 600-601.

C. The point was not waived.

Fla. R. Crim. P. 3.390(d) provides:

Objections. No party may raise on appeal the giving or failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the presence of the jury.

In this case the court was aware of the basis for the instruction-the gassing-and the court clearly denied Dr. Mora's request for it. An instruction on involuntary intoxication was requested in those express terms. The request for the instruction was renewed by counsel's objection following the reading of the instructions to the jury.

To be sure, as the State argues, a proposed written jury instruction would certainly have been preferable to Dr. Mora's oral request. But, the court flatly told Dr. Mora that the defense did not exist, so there was no reason for him to follow up with a written instruction.

Dr. Mora would note that the text of Fla. R. Crim. P. 3.390(c)² would not have put him on notice that an oral request for

² Written Request. At the close of the evidence, or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The

a special jury instruction was insufficient.

The court was placed on notice that the failure to give the instruction might be error. The objection was preserved. Carpenter v. State, 26 Florida L. Weekly S125 (Fla. 2001); Austin v. State, 406 So.2d 1128 (4th DCA 1981).

D. The error was not harmless.

The failure to give the instruction is not harmless error. Carter v. State, *supra*.

CONCLUSION

There was sufficient evidence in the record to warrant the reading of an involuntary intoxication instruction to the jury. There was no waiver of the objection. The failure to give the instruction was not harmless error.

court shall inform counsel of its proposed action on the request and of the instructions that will be given prior to their argument to the jury.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to Office of the Attorney General, 1655 Palm Beach Lakes Boulevard, 3rd Floor, West Palm Beach, Florida 33401, and by U.S. Mail to Dr. Julio Mora, C.D. #O-L11003, M.D.#A-1, Union Correctional Institution, Post Office Box 221, Raiford, Florida 32083-0221 this 15th day of June, 2001.

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CERTIFICATE OF TYPE SIZE AND STYLE

I certify that this brief is prepared in 12 point courier new, a font that is not proportionately spaced.

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