

1 I WILL NEED TO. THE COURT IS AWARE OF THAT WITH ME.
2 BUT 30 MINUTES LIMITING, I DON'T KNOW.

3 THE COURT: WELL, YOU ALL ARE DIRECTED TO KEEP
4 YOUR CLOSING ARGUMENTS TO 30 MINUTES. I MAY ALLOW
5 YOU A MINUTE OR TWO OVER THAT, BUT I'LL WARN YOU
6 ACCORDINGLY IF YOU GET BEYOND THAT.

7 MR. EIDE: THANK YOU, YOUR HONOR.

8 THE COURT: ANYTHING ELSE NOW, AS FAR AS JURY
9 INSTRUCTIONS? DO YOU WANT TO MAKE ANY OTHER ARGUMENT
10 ON THIS INVOLUNTARY INTOXICATION?

11 MR. EIDE: YOUR HONOR, WE WOULD STILL ASK FOR
12 THE INVOLUNTARY INTOXICATION INSTRUCTION. THE CASE
13 LAW ON INSTRUCTIONS OF JURIES, BASICALLY, SAYS THAT
14 IF THERE IS EVIDENCE THAT WOULD BE SUFFICIENT FOR IT
15 TO GO TO THE JURY, THEN IT SHOULD BE GIVEN.

16 THEN THE QUESTION WOULD BE, ANY QUESTIONS
17 WHETHER OR NOT IT SHOULD BE GIVEN WOULD BE RESOLVED
18 IN FAVOR OF, USING THAT INSTRUCTION IN GRANTING IT.

19 WE THINK THAT THE STATE'S TESTIMONY AND
20 DIRECT EVIDENCE AND WHAT THEY HAD ELICITED FROM THEIR
21 WITNESSES INDICATED THAT MR. MERSON HAD ANYWHERE FROM
22 THREE TO SIX BEERS. MR. MERSON'S TESTIMONY WAS THAT,
23 "IT WOULD TAKE ME TWELVE BEERS TO GET DRUNK."

24 HOWEVER, AFTER WORKING DUI'S AND OTHER
25 THINGS, THIS COURT UNDERSTANDS AND I'M SURE KNOWS

1 THAT WHEN SOMEONE SAYS, I CAN TAKE "X" AMOUNT OF
2 BEERS BEFORE I CAN GET DRUNK, THAT'S NOT ALWAYS AN
3 ACCURATE STATEMENT.

4 THE COURT: BUT YOU'VE NEVER RAISED THIS AS A
5 DEFENSE.

6 MR. EIDE: YOUR HONOR, WE HAVE NOT RAISED AS AN
7 AFFIRMATIVE DEFENSE, IN OTHER WORDS, MR. MERSON SAYING,
8 "I WAS DRUNK." BUT HE DID TESTIFY THAT HE HAD BEEN
9 DRINKING BEERS, AND THE STATE'S WITNESSES TESTIFIED
10 THAT HE HAD BEEN DRINKING.

11 AND THAT COULD BE SOMETHING THAT WOULD
12 LESSEN HIS INTENT OR FIRE PASSIONS, IF THE JURY BELIEVED
13 THAT HE WAS THERE. SO WE WOULD REQUEST THAT INSTRUCTION,
14 STILL.

15 THE COURT: THE REQUEST FOR THE INSTRUCTION WILL
16 BE DENIED.

17 ANYTHING ELSE WE NEED TO TAKE UP?

18 MR. EIDE: NOTHING ELSE, YOUR HONOR.

19 THE COURT: RETURN THE JURY.

20 (THEREUPON, THE JURY ENTERED THE COURTROOM, AFTER
21 WHICH THE FOLLOWING PROCEEDINGS TRANSPIRED:)

22 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
23 NEEDLESS TO SAY, WE'VE GOT SOME AIR-CONDITIONING
24 PROBLEMS. FEEL FREE TO REMOVE YOUR JACKETS, IF YOU
25 WISH, AND THAT APPLIES TO EVERYONE ELSE. IF THEY WISH