ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

STATE OF ARIZONA v. HON. HEGYI/JOSH RASMUSSEN
CR-16-0264-PR

PARTIES AND COUNSEL:

Petitioner: Josh Rasmussen

Respondent: The State of Arizona

FACTS:

Rasmussen was indicted and charged with robbery and first-degree murder. Early evaluations raised questions about Rasmussen's sanity, and he formally noticed a Guilty Except Insane (GEI) defense under A.R.S. § 13-502 (2010). He then hired John A. Moran, Ph.D., to evaluate his mental-health status. Dr. Moran concluded that Rasmussen was GEI.

The State raised concerns about Dr. Moran's diagnosis, and the State and Rasmussen agreed to a joint, second opinion by a court-appointed doctor. That doctor reported that he agreed with Dr. Moran that Rasmussen fit the criteria of GEI.

The State requested the raw data and notes taken by all the doctors who evaluated Rasmussen that led to the GEI defense. The defense agreed to provide the State with those materials based on *Austin v. Alfred*, 163 Ariz. 397, 788 P.2d 130 (App. 1990). However, before disclosing the materials, the defense redacted Rasmussen's own statements to the psychologists.

The State subsequently retained its own expert, Dr. Youngjohn, who evaluated Rasmussen. In connection with this examination, the State requested the records including the redacted statements. The State filed a "Motion to Compel Disclosure" under Rules 15.2(c), (e), and (g), Rules of Criminal Procedure, requesting "unredacted client files from the mental health doctors hired by the defense for all mental health evaluations of Defendant Rasmussen."

The Motion to Compel stated that "[a]lthough statements made by a defendant to a mental health expert for a determination of a defendant's competency to stand trial are generally not accessible by the State [Ariz. R. Crim. Pro. 11.4 and *Austin v. Alfred*, 163 Ariz. 397, 788 P.2d 130 (App. 1990)], the State is entitled to those statements when a defendant raises the affirmative defense of insanity under A.R.S. § 13-502."

The Motion to Compel contended that a claim of insanity under A.R.S. § 13-502 makes relevant and discoverable all information related to the determination of GEI. Citing, Criminal Rule 11.7(a) ("No evidence of any kind obtained under these provisions, or evidence resulting therefrom, concerning the events which form the basis of the charges against the defendant shall

be admissible at any proceeding to determine guilt or innocence **unless the defendant presents evidence intended to rebut the presumption of sanity**.")(Emphasis added).

The Motion to Compel also cited A.R.S. § 13-3993(D) ("If any mental disability defense is raised, both the state and the defendant shall receive prior to the trial **complete copies** of any report by a medical doctor or licensed psychologist who examines the defendant to determine the defendant's mental state at the time of the alleged crime or the defendant's competency.")(Emphasis added).

Lastly, the Motion to Compel cited the psychologist-patient privilege statute applicable to competency examinations, A.R.S. §13-4508 (B), which creates a privilege for patient-psychologist statements "**unless the defendant presents evidence that is intended to rebut the presumption of sanity**." (Emphasis added).

The Motion to Compel argued that the State wished to have "its own recently hired doctor [Dr. Youngjohn] have all of the same information as the defense doctors when completing his evaluation of Defendant Rasmussen," and that, without disclosure of Rasmussen's statements, the jury would have difficulty "comparing and contrasting the testimony of the State and defense experts, knowing that one side relied on secret information that the other could not access."

In response to the Motion to Compel, Rasmussen pointed out that, during his three-hour examination of Rasmussen, Dr. Youngjohn had every opportunity to ask Rasmussen any question he thought pertinent to a GEI evaluation. Rasmussen relied upon *Austin v. Alfred*, *supra* ("*Austin*"), an insanity defense case that determined that "statements made by Austin concerning the offenses must be excised from materials disclosed to the State." 163 Ariz. at 403, 788 P.2d at 136. Rasmussen emphasized that *Austin* repeatedly gives reasons why mental health evaluators for the defense and their files should be disclosed to the State, but with the caveat that the defendant is protected because his or her statements will be excised.

Judge Hegyi denied the Motion to Compel, stating that "[t]he Court finds that *Austin v. Alfred*, 163 Ariz. 397 (App. 1990) controls [the Court's] decision." Consequently, Judge Hegyi ruled, Rasmussen's statements concerning the offense could be redacted from the reports.

The State sought relief by filing a Special Action. The Court of Appeals granted relief, holding that a defendant who undergoes a court-ordered mental-health examination has a Fifth Amendment privilege against self-incrimination, and any statement to the examiner about the facts in the case must be redacted. If, however, a defendant raises the GEI defense, he must provide the unredacted report from any non-court-appointed expert. Rasmussen filed a Petition for Review, which this Court granted on January 10, 2017.

ISSUE:
"Did the Court of Appeals err in granting the state's motion to compel disclosure of Rasmussen's redacted statements made to psychiatric experts relating to the commission of the crime"?