**Legal Research Memorandum: The Withdrawal of Consent Assignment Instructions**

**Overview**

Legal memoranda (“memos”) are a staple of the legal field. There are all kinds legal memos. Objective memos ask you to draft a legal opinion that is neutral and displays all sides of a legal argument. Persuasive memos are drafted with a specific result in mind. Whether you work for a judge, a public office, or a private firm, legal memos are going to be a big part of your job. That being said, it’s very important to develop your memo-writing skills. The purpose of this assignment is to draft a persuasive memo based on the facts given to you in your Legal Memoranda Topics.

Instructions

Topic: Rape and the Withdrawal of Consent

Inga went to a bar on Hilton Head Island at 9:00 p.m. with her friend Abby to celebrate Abby’s birthday. By midnight, Inga had consumed four beers and several shots of hard liquor. Then Abby’s boyfriend Al arrived at the bar, accompanied by his friend Derk, whom Inga did not know. The four agreed to go to Al’s house, where Inga consumed two more beers. Abby and Al noticed that Inga seemed incoherent when she lay down on the living room couch around 1:00 a.m., which is when Abby and Al retired for the night. At the time, Derk was lying down on the floor. Inga testified that she does not remember what happened from the time that she arrived at Al’s house until the time when she noticed that she was lying on the floor with Derk on top of her, engaging in sexual intercourse. Inga pushed Derk off and screamed for Abby and Al, who took Inga to the hospital.

The police arrested Derk for rape. Derk testified at his trial that, “I don’t know how intoxicated Inga was that night. I only saw her drink two beers at Al’s house. Then after Abby and Al went to bed, Inga rolled off the couch and found me on the floor. She said that she wanted to have sex, and so we did.”

The trial judge must decide between two competing jury instructions. Assume that the relevant definition of rape in South Carolina is “an act of sexual penetration accomplished with any person” when “the victim is incapable of giving consent because of any intoxicating agent.”

The prosecutor argues that this instruction should be given:

*Consent is not a defense to the crime of rape defined as sexual penetration where the victim is incapable of giving consent because of intoxication. In determining whether the victim was incapable of giving consent because of intoxication, you must consider all the circumstances in determining whether the victim’s intoxication rendered her unable to exercise reasonable judgment.*

The defense counsel argues that this instruction should be given:

*Consent is not a defense to the crime of rape defined as sexual penetration where the victim is incapable of giving consent because of intoxication, if the victim was incapable of giving con- sent because intoxication rendered her unable to exercise reasonable judgment, and if the Defendant knew that the victim was unable to exercise reasonable judgment because of her intoxication.*

What arguments will be made by each side to support these competing instructions? How should the court rule, in light of all the rape reform policies that are illustrated in the cases in this chapter? See State v. Jones, 804 N.W. 2d 409 (S.D. 2011).

Your memo must meet the following requirements:

* The length of assignment 2,500 words
* The assignment must be written according to current Bluebook writing
* The assignment must contain a minimum of four sources.

Note: Your assignment will be checked for originality via the Turnitin plagiarism tool.