

CRIMINAL EVIDENCE WORKSHOP

Fall Semester 2015

PROBLEM NO. 3

Janet Smith is charged with kidnaping in violation of Title 18, United States Code, Section 1201. The indictment alleges that on September 2, 2015, Smith went to the home of Samuel Jones and kidnapped Jones' 5-year-old son, Murray. The FBI case agent theorizes that Janet had attempted to buy five kilos of cocaine from Jones for \$100,000. Jones, rather than intending to sell the cocaine, stole the \$100,000 from Janet. Janet then kidnapped Murray to hold him as a hostage until Jones repaid the money. The agents interviewed Jones, but he denies being involved in any drug deal, and denies stealing \$100,000 from anyone. He claims he does not know Janet, but surprisingly he refuses to testify against her. He tells the prosecutor: "If you call me to the witness stand, I will invoke the fifth amendment."

Murray was held captive for 24 hours in a hotel room. When he was kidnapped, he was blindfolded, and is unable to identify the kidnapers. He tells the agents the kidnapers were wearing monster masks and he was terrified of them. The blindfold was removed only when Murray was in the hotel room; whenever he was taken out, the blindfold was put back on. Murray tells the FBI agent that his blindfold slipped once and he saw the female kidnapper and thinks he can identify her.

Only Murray will be called as a government witness. Murray is 5 years old and is not very mature. He is still traumatized by his ordeal and is afraid of the kidnapers, who he thinks will be

in court. The prosecution will ask that they be allowed to ask him leading questions. The defense will oppose the request.

Murray will be unable to identify Janet at the trial, but he did so right after the kidnapping. When the agents interviewed Murray, he was crying so hard he was almost speechless, in shock, and had wet his pants. He was only shown a photo of Janet, which he identified and signed, but at the time, he was physically shaking, sweating profusely, and had difficulty speaking. There was a bruise on his face and he had suffered a possible concussion. Since the kidnapping Murray has been severely depressed, and has been prescribed the anti-depression drug, Zoloft.

The agents served a search warrant on Janet's house, and seized a .38 caliber Smith & Wesson revolver, and a large hunting knife. The housekeeper, however, cannot positively identify either one. In the attic of Janet's house, they found box after box of books, which were case studies of violent offenders; textbooks on police procedures and the latest forensic techniques. Also there were binders with printouts cataloguing famous kidnapers and where they had gone wrong. The government will introduce a copy of the search warrant into evidence.

During the course of the search of Janet's house, the agents also seized the following evidence, which the prosecution will seek to introduce into evidence at the trial:

1. A book entitled "Kidnapping For Dummies."
2. A book entitled: "How To Cook Crack."
3. A passport in Janet's name obtained two weeks prior to the kidnapping.
4. A plane ticket in Janet's name to Tahiti.
5. Hundreds of ziplock baggies, and a triple beam scale, which is a popular scale for weighing drugs, among other things.

Janet tells her defense lawyer that she was in Aspen, Colorado, at the time of the kidnapping, attending a seminar on personal motivation. Janet has a real estate license and works out of her home selling single family residences. She will be called as a witness to testify about her alibi. She stayed at a hotel in Aspen, and the defense shall introduce into evidence a copy of the hotel bill. Janet paid for the bill with her American Express card. The defense shall introduce a copy of the American Express receipt.

When Janet was arrested, she made no statements to the agents. The defense filed a motion to suppress the items seized during the search, and it was denied prior to the trial. Janet testifies that she was robbed several years ago, introduce police report, and she bought a gun because of that the next week end. She claims a police officer told her to buy a gun for self-defense.

The following rules are necessary to this problem. FRE 401, 803(1), 803(2), 803(6), 801(d)(1)(C); and 902(11). The prosecution can use Murray, the FBI agent, and the housekeeper as witnesses, and the defense can only use the defendant.