

CRIMINAL EVIDENCE WORKSHOP

Fall Semester 2019

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, 2019, Smith and two co-conspirators went to the home of Samuel Jones and kidnaped Jones' brother and business partner Morris. The FBI case agent was told by an informant 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 kidnaped Morris 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 he refuses to testify against her. He tells the prosecutor: "If you call me to the witness stand, I will invoke the fifth amendment."

Morris was held captive for 24 hours in a hotel room. When he was kidnaped, he was blindfolded, and is unable to identify the kidnappers. Morris tells the FBI agent that his blindfold slipped once and he saw the female kidnapper and thinks he can identify her.

Only Morris will be called as a government witness. He is still traumatized by his ordeal and is afraid of the kidnappers, who he thinks will be in court. Morris will be able to identify Janet at the trial. 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 kidnaping Morris 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. 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 passport in Janet's name obtained two weeks prior to the kidnapping.
2. A plane ticket in Janet's name to Tahiti.
3. 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.

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.