

CRIMINAL EVIDENCE WORKSHOP
Fall Semester 2021
PROBLEM NO. 2

On Sept. 11, 2019 at 2:55 p.m., just before the scheduled closing of the bank, a young, Asian American male entered the Wells Fargo Bank located in the lobby at 200 South Biscayne Boulevard. There were ten customers in the bank at the time, and two security guards. He stood in line and even talked casually on his cell phone. The man went to a teller named Susan Serena and handed her a paper bag and a note, which stated: Put all the money from your cash drawer in this bag. Serena hesitated and the robber said: "Gimme' all the money or I'll blow your motherfucking head off." At the same time the robber opened his shirt and displayed a .38 caliber Smith & Wesson revolver lodged in his waistband. The teller emptied all the contents of the cash drawer into the paper bag and handed the bag back to the robber. The robbery from beginning to end took approximately 3 minutes. Once he got the money, he fled the bank and employees immediately called 911. Four police officers responded to the call. All the witnesses except the teller said they couldn't identify the robber except to say he was short and slim.

Later that day, a special agent with the FBI interviewed the bank teller. She described the bank robber as asian, between 25 and 50 and had thick black hair. The agent's initial FBI 302 report is attached to this problem.

Several days after the initial interview, the FBI agent went back to the bank and showed the bank teller a photographic line-up with six mug shots. The teller spent approximately five minutes looking at these photographs, and finally identified a photograph of "Willie" Wang as the man who committed the robbery.

Wang was promptly arrested. After receiving his Miranda rights, Wang told the agent that he did not commit the robbery and that he was at work at the time of the robbery. The FBI agent served a search warrant on the defendant's home finding a .38 caliber hand gun, a 380 pistol, an SKS 7.62 millimeter rifle and magazine, a 9 millimeter Berreta pistol, an M-1 Carbine semiautomatic rifle, multiple 30-caliber magazines, three 9 millimeter magazines, and Halloween masks. A grand jury returns an indictment against the defendant for bank robbery pursuant to Title 18, United States Code, Section 2113(a). The government will call the bank teller and the other testimony and evidence described above is already in the record.

The government shall introduce the following exhibits into evidence:

1. Receipts showing purchase of the .38;
2. All the photographs used in the photographic line-up;
3. The search warrant and all items seized during the search.

Wang is an illegal immigrant who overstayed his visa.

Wang tells his lawyer he is a bartender at Wet Willie's and was at work when the bank robbery occurred. He gets his time card from his employer and gives it to his lawyer.

The Defendant will introduce the following exhibit into evidence:

1. The time card from work.

The defense will also attempt to introduce the exculpatory statement made to the agent at the time of Wang's arrest.

The defense may only call the defendant as a witness.

Among other things this problem requires the ability to use business records. Fluency with FRE 803(6) is essential today. Even the most minor cases have important documents and

large cases can have millions. Here is a discussion about using FRE 803(6).

<http://www.royblack.com/blog/business-records/>.

MEMORANDUM

TO: Special Agent in Charge
Miami FBI Office

DATE: Sept. 16, 2019

FILE: WB2019

FROM: Special Agent Wilson

RE: Wells Fargo Bank
Robbery

A problem has arisen during my investigation of the Wells Fargo bank robbery.

When I first interviewed Susan Serena at the bank the day of the robbery she was crying, quite shaken, her voice was trembling and cracking, and her hands were shaking. She was so upset that she couldn't drive home and asked her boyfriend to pick her up at the bank. She later told me she couldn't sleep that night and she couldn't return to work for three days.

When I interviewed her on September 16th she said she gets upset when serving any asian customers. In fact she made the following statement: "*All those chinks look alike and I don't know if I could identify him if I saw him again. What are they doing here? They should go*

back to China." Of course I was disturbed by this remark but I noticed how emotionally wrought the teller was and I believe she was still reacting to the stress of being robbed.

I was so concerned about her condition that I brought in our agency PTSD expert who talked to her and calmed her fears. She became much more cooperative and I was able to complete the interview. Serena said that she thought she could now identify the bank robber if she saw him again, and said she now knew her original statement was made only because she was frightened.

I did not immediately conduct a photo line-up with Serena because of her initial statement. Only after she calmed down and spoke to our psychiatrist did I show her the mugshots. She viewed the photo line-up and positively identified Wang. I immediately sought an arrest warrant.