

Problem 7A

This is a continuation of State v. Waldron and Atkins, problem 5A.

The prosecutor has a problem. There are no eyewitnesses to the murder of Natasha Tate, since both occupants of the house were killed. A neighbor, Mac Radner, saw three or four people enter the victims' home around 9:30 pm on the night of the homicide, but cannot identify anyone because it was too dark to see their face. He describes them as wearing gray hooded sweatshirts, at least one of which had a picture of Pikachu on the front. The tallest of the group was carrying a Nike brand duffle bag.

A police detective has told her that there have been some similar cases in Bloomington over the past few years. Two are intriguing:

A) In October 2014, a man named Adam Snow said that he was staying at a friend's apartment at Smallwood Plaza, when two men and two women entered the apartment, demanded his supply of crack, and beat him when he said he didn't have any and it wasn't his apartment. He recalls that one of the women was wearing a shirt or sweatshirt with Pikachu on it. They were unable to identify any suspects and the case was never prosecuted.

B) In February 2015, a known drug dealer named Doogie Bombita was threatened with guns by a man and two women in the parking lot of The Warehouse on Rogers Street during a drug sale. The man had an automatic of some kind, and one of women had a small revolver and wore a Pikachu shirt. The three then stole Doogie's drugs which were in a Nike duffle bag. Doogie said the man was Charlie and everyone called the women Charlie's Angels. He identified Waldron and Atkins from police mug shots as the Angels. Shortly thereafter, Bombita disappeared and the case was never prosecuted, but he is currently in jail on an unrelated drug charge and might be willing to testify in return for a reduction in his charges.

PART ONE -- Think about the arguments for and against the admissibility of these two items of evidence.

PART TWO -- Assume the prosecutor notifies the defense attorney of her intent to use this evidence as required by Rule 404(b)(2). You are the defense attorney for Waldron (the one alleged to have shot Natasha) and your client has told you she and Atkins are in fact drug dealers, but were at the Starlight Drive-In that night and did not go to the victims' house. They did not see anyone they knew and no one can verify the alibi. Think through trial strategy of calling Waldron and having her testify to the alibi versus not having her testify at all.

Problem 7B.

This is a continuation of State v. Hickman, problem 3A.

PART ONE:

Matthew and Melissa Hickman's 6-year marriage was a rocky one and there were numerous incidents of domestic violence in which Matthew belittled and then beat Melissa. In six police reports, Melissa says that Matthew's anger and violence was triggered by his belief that Melissa was being unfaithful or disobedient.

Think through the arguments for and against the admissibility of this evidence.

PART TWO:

In his statement to the police, Matthew claims he was standing by the truck waiting for Melissa to return, so he could try to talk her into dropping the protective order. He says he was smoking a cigarette when he smelled gasoline. He decided he better put out the cigarette, so he flicked it away, but the wind caught it and blew it back into the truck bed, whereupon the truck burst into flames.

A detective informs the prosecutor that three years ago, Matt was fired from his job at Designscape, and the next day, someone set fire to two of their trucks. Surveillance video shows Matt entering the office building the evening of the fire after the close of business, but no camera is pointed toward the lot where the trucks are parked. Matt said he was going to retrieve his own property from his locker and the case was dismissed for lack of evidence.

Think through the arguments for and against the admissibility of this evidence.

Problem 7C

This is a continuation of Turner v. Big Red, problem 4B.

PART ONE:

Plaintiff calls Wally Adams, who testifies that in the month before the accident, he helped Jane Arden load the delivery truck approximately 30 times. When they were done, he would give Jane a clipboard of invoices with the addresses of the recipients. He is asked:

Q: What would she do next?

A: She would always get out her cell phone and start entering the addresses into it as she pulled out of the parking lot onto College Avenue.

Think through the arguments for and against the admissibility of this evidence.

PART TWO:

Big Red calls Richard Thompson who testifies that he is the assistant manager with responsibility for deliveries. It is Big Red's policy that deliveries are only to be made between 1:00 and 9:00 pm when he is on duty. If he is not available, one of the experienced staff handles deliveries. Deliveries must be pre-paid and arranged for personally at the store, except for catering businesses. When a customer places an order for delivery, he provides an address that is entered on an electronic invoice. Big Red prohibits its drivers from using cell phones while driving and informs every employee of this rule when hired. On each day when there are deliveries, he or a staff member prints out the addresses and a Google maps diagram showing where the place of delivery is located so drivers do not have to use GPS while driving. Richard verifies that Jane Arden was a delivery driver for Big Red In September 2015, but has no particular memory of what happened before the accident.

Think through the arguments for and against the admissibility of this evidence.

PART THREE:

Revisit Problem 6A in which Ashley Miller testified that Jane had a reputation for being a bad and inattentive driver, and that she also personally thought Ashley was a terrible driver based on several incidents.

- 1) What if instead of testifying that Jane had a reputation for being a bad and inattentive driver, Ashley testified that Jane had a reputation for always being a bad and inattentive driver.
- 2) Instead of testifying that she personally rode with Jane many times and believed Jane is a terrible driver, Ashley testified that she believed Jane was always a terrible driver.
- 3) Instead of testifying that she had to ask Jane on three occasions not to text and drive at the same time, Ashley testified that she had to ask Jane on every occasion not to text and drive.

Think through the arguments for and against the admissibility of these three items of evidence.

