

Problem 13A

Continuation of *Turner v. Big Red Liquors*, problem 4B.

In her police report, Leslie Ross wrote:

Measured truck skidmarks as 72 feet in the west lane of College Avenue, a 3-lane street one way south. Gross vehicle weight listed as 15,000 pounds and it was mostly empty, so I estimate around 9,000 pounds actual weight. That means the truck was going 35 miles an hour when the driver hit the brakes. The speed limit is 30. It would have taken the truck about 3.5 seconds to come to a stop. A motorized wheel chair going 3 mph covers 5 feet per second, so the victim would have been in the cross-walk about 10 feet into the intersection when the driver hit the brakes. Based on the statements of witnesses, the traffic signals would have been green for the victim and red for the driver at the time the driver applied the brakes.

Ross has been a patrol officer for four years, has investigated over 100 traffic accidents, and always prepares an analysis of the accident when she does a report, following the basic procedures she was taught when she took a course in basic accident reconstruction at the police academy. Ross has no formal training in engineering or physics.

Think through the arguments for and against admissibility of Ross's testimony.

Problem 13B

This is a continuation of problem 3A, *State v. Hickman*, the truck arson case.

The State intends to call Dr. Louise Crane, a professor of psychology at I.U., whose area of specialty is domestic violence and battered women. She proposes to testify about her work developing what she calls the "independence reaction profile" that studies how men behave after their victims have left an abusive relationship and obtained a protective order. The research is attempting to identify how men react to protective orders and whether there are specific times when victims are at risk of violence. Preliminary findings confirm that men tend toward uncontrollable violence in the two-week period after a protective order if they perceive things are being taken away from them, such as the children or the family home, and the violence is equally likely to be directed toward the victim, the object or himself, as in murder-suicides. She will testify that her research shows that 100% of men who have protective orders issued against them commit at least one act of violence within the first 5 days. She will say Matthew Hickman fits this profile.

Think through the arguments for and against admissibility of Crane's testimony.

Problem 13C.

State v. Hickman, continued. The State calls Sophie Hickman, 6-year-old daughter of Matthew and Melissa. Sophie testifies that her father (Matthew) saw her At school the day before the truck fire and told her not to ride in the truck the next day, because something bad was going to happen to it. Sophie is cross-examined by Matthew's lawyer, suggesting that she had been coached by her mother to testify against her father. The state's next witness is Danielle Jackson, clinical social worker and licensed mental health counselor at Templeton Elementary School, and the following direct examination takes place:

- 1 Q: Do you know Sophie Hickman?
 A: Yes, she is in first grade at Templeton.
- 2 Q: How do you know her? In what context?
 A: I have been counseling her because she has been upset over her parents' divorce.
- 3 Q: What is your counseling background?
 A: I have a masters degree in psychiatric social work from St. Mary of the Woods College, am certified in childhood therapy by the state of Indiana, and have been a counselor at Templeton for five years.
- 4 Q: Have you counseled children whose parents are going through a divorce?
 A: Yes, probably 30 times.
- 5 Q: Do children behave like adults in response to a family crisis like an angry divorce?
 A: No. They react to stress differently.
- 6 Q: Is it important in your counseling for you to distinguish when a child is telling the truth and when she is fantasizing?
 A: Yes, although it's more complicated. A child can tell the truth, can tell part of the truth, can withhold information to avoid hurting a parent, can fantasize, and can engage in various forms of denial.
- 7 Q: Can these distinctions be made reliably?
 A: Yes, by trained and experienced counselor. There are standard techniques we learn in our clinical experiences as masters students to look for resistance to answer certain questions. Helping a child distinguish fact from fantasy is important therapeutically.
- 8 Q: Have you seen any evidence that Sophie is prone to fantasizing, to withholding information, or to any other form of deceptive behavior?
 A: No. She seemed to be dealing with her parents' divorce in quite a healthy way.
9. Q: In your opinion, was her mother influencing her view of her father?
 A: No.

10. Q: So when Sophie says her father told her to stay away from the truck, do you think she was being truthful?
A: Yes.

Think through the arguments for and against the admissibility of this testimony, especially items 8, 9 and 10.

Problem 13D

This is a continuation of Problem 5A, *State v. Waldron and Atkins* (homicide).

Susan Atkins has asserted an insanity defense. She plans to call as a witness, Dr. Sheldon Greenberg, a political scientist and clinical psychologist who studies mass hysteria in political movements. His research seeks to explain why people commit horrific acts in the name of politics, seeking insights from Nazi Germany and applying them to modern phenomena like Islamic terrorism and violent homophobia. His explanation is that a certain set of circumstances can produce classic insanity in which a person with a subservient personality, especially one who has not been successful, loses the ability to tell right from wrong and is willing to obey an authority figure who identifies a particular sub-class as responsible for the problems the person cannot deal with.

He has just written an article examining the handful of Donald Trump supporters who have engaged in acts of violence toward racial and religious minorities at Trump rallies, and setting out the theory of the “Trump rage” syndrome, which has been accepted for publication in the peer-reviewed *Journal of Abnormal Behavior*. He will testify that based on her behavior, the amount of Trump literature in her apartment, the statements of acquaintances describing her behavior around the time of the killing, and the fact that Atkins wrote “build the wall” on the wall of the victims’ house, Greenberg is of the opinion that Atkins was driven to an uncontrollable rage against minorities by the political rhetoric of Trump and was unable to distinguish right from wrong when she stabbed Natasha Tate, who was part Hispanic and part African-American.

Greenberg’s theory is based on:

- Ethnographic studies of gay killings by people claiming to be following god’s will.
- Historical studies of Nazi Germany.
- The literature analyzing the so-called Stanford Prison Experiment in authoritarianism.
- The social psychology literature on mass hysteria.
- Sociological and political writings on community tolerance of the Ku Klux Klan.
- Political science analysis of Islamic terrorism.
- Case studies by Army psychiatrists on POW’s who collaborated with the enemy.

Greenberg has a PhD in clinical psychology as well as political science, but has never been a practicing psychologist.

Think about the arguments for and against the admissibility of this testimony.