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Adapted by Joseph Ross II

PLENARY SESSION FACT PROBLEM

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Your client, 19 year old Michael Fish, is charged along with his 24 year old brother Edward Fish, 25 year old John Blake, and 15 year old Kimmie Green, with Kidnaping, Aggravated Assault, Carjacking, Witness Intimidation, Simple Assault and False Imprisonment. Because of Bruton problems, each defendant will be tried separately. Edward was to be tried first, but has entered a plea of guilty to Aggravated Assault, and has been sentenced to seven and a half to fifteen years. Michael is scheduled to be tried next. At trial, the following evidence may be elicited:

The Direct Examination Testimony of the Complainant, Paul Myers

The alleged victim, Paul Myers, is a 41 year old gay man. He is black. Myers lives alone in a private one family house in a middle class residential neighborhood in North Raleigh. He works as an accountant for a local insurance company. He says that at about 7:00 P.M. on February 13, 2016, he went to Woody's, a gay bar in Downtown Raleigh. He saw Michael and Edward Fish come into the bar at about 8:30 P.M.

Myers says that he approached Michael at the bar and bought him a drink. Myers says that over the course of the entire evening, he had two gin and tonics. Edward sat at another table, with Kimmie Green and John Blake. After about an hour, Myers decided to leave. As he was leaving, Michael asked him to go for a ride, but Myers refused, saying that he had supper waiting at home. Myers said that he left the bar alone, and Michael followed him out two or three seconds later.

Myers swears that when he reached his car, a 2009 two seater Camaro, he was jumped from behind by Edward, John and Kimmie. They beat him and kicked him, and Edward took his car keys. Edward tossed the keys to Michael, who was standing a few feet away, and said "drive." They drove first to Wells Fargo inside the VA Hospital in Fayetteville, NC, where John, Edward and Kimmie forced Myers to an ATM to take out money.

They drove south for about two days, with all of them, including Myers, sharing the driving duties. When Edward ordered Myers to drive, he said, "I'll kill you if you try anything funny." They subsisted by stopping at convenience stores for food, beer, and to use the restrooms. Myers testified that at various times, Edward, John and Kimmie all hit and kicked him. Kimmie frequently burned him with cigarettes and poked him with a pocket knife. Two or three times, Michael asked his brother to "tell her to put that away."

After two days, Edward announced that he was tired and wanted to go home. They turned the car around, and drove back to Asheville. They dropped Myers off at his house. Edward told him "don't call the cops or we'll kill you." A few minutes after dropping off Myers, Edward texted Myers and repeated, "don't call the cops or we will kill you." As soon as the others left, Myers called the police. Within two hours, all of the defendants were arrested at their homes.

Police reports also show that about three weeks before the incident, Myers encountered Edward Fish in another gay bar, and agreed to go for a ride with him. Myers said that he drove Edward to a local motel where Edward said an orgy was supposed to be going on. Myers insisted that he did not go inside, because he does not enjoy orgies. Instead, he waited for two hours in the car for Edward to return. Before Edward returned, however, a police car drove by

and the officer arrested Myers for public intoxication. Myers' car was impounded, and he spent a night in jail. The next morning he pleaded guilty to summary public intoxication and received a \$50 fine. He has no other criminal record.

The Assistant United States Attorney will introduce photos and medical testimony showing that immediately after the incident, Myers was suffering from bruises all over his body; minor burns on his arms, legs, and chin; some very minor puncture wounds (less than 1/16 inch deep and less than 1/8 inch wide) all over his body; and exhaustion.

The Direct Examination Testimony of Kimmie Green

Kimmie Green agreed to testify against the others. In return, she was promised that her case would stay in state juvenile court, and she would get no more than one-year detention.

Kimmie will testify that she first met the Fish brothers at a mall, a week before the incident, and that she went out with Edward a few times. The day before the incident, they were all hanging out at the Mall, when someone got the idea of "finding some rich old gay guy, kidnaping him, and driving to Florida," where they "would kill him, and live off his money." She doesn't remember who first got the idea, but she says that Edward and Michael suggested doing it to Myers, whom they had previously seen in a bar.

Kimmie also admits that during the two-day drive she burned Myers with cigarettes, because "it was fun." In particular, she "liked to see him jump and hear him scream." Kimmie also admits that she smoked marijuana, and had sex with Edward and John in the car during the drive, and that she had teased Myers because he was gay. She says she did not have sex with Michael, because "retards are a real turn-off."

Your Interview of Sam Pate, the Bartender at Woody's

Sam Pate is the bartender who was on duty on the evening of February 13th. He knew Paul Myers as a regular customer at the bar. He also knew that Myers frequently picked up younger men at the bar, and left with them. Pate insists that anyone who looks like they are under 21 is immediately ejected from the bar, and that he never serves alcohol to anyone who is underage.

Pate saw Myers drinking with Michael Fish for about an hour. Myers then introduced Michael to Pate, and they had another drink together. About two hours later, Myers, Michael and Edward Fish, John Blake and Kimmie Green all put on their coats and began to leave. Pate jokingly took Myers aside and asked him "are you taking all of them home?" Myers answered, "No, just Michael."

Your Interview With Your Client, Michael Fish

Michael Fish is a 19-year-old white man. He dropped out of high school last year, in the 10th grade. His IQ is 73. He is borderline literate. He works full time on the day shift at Burger King. He has never been previously arrested. He says that sometimes he smokes a little weed, but that he does not have any drug or alcohol addiction problems. His hobby is weightlifting. He lives with his older brother Edward in a trailer park about ten miles outside of Raleigh.

Michael tells you that neither he nor his brother is gay but that sometimes they go to gay bars because no one gives him trouble about being underage and drinking there. According to Michael, Edward has been in and out of prison for the past 5 years, mostly for theft and marijuana offenses, and once or twice for bar fights. Michael says that Edward is “not a drug addict, but likes to drink beer, smokes a lot of dope, and sometimes does a little crack.” Edward is unemployed.

Michael says that on February 13th, he went with his brother and one of his brother’s friends, John Blake, to Woody’s to have a few drinks. Kimmie Green, a girl Edward had been dating for a week or two came with them. Michael says that both Kimmie and John are white. He thinks John is “about the same age as Edward,” and Kimmie is “about 17 or 18.” When they got to the bar, Edward met a guy he knew named Paul. Paul spent most of his time talking to Michael, while Edward went to a different table with Kimmie and John. They were all in the bar for about 2 hours. Everyone was drinking, and they were all “a little high, but not drunk.” Paul introduced Michael to the bartender shortly before they left. After a while, Edward, Kimmie and John came over to their table. All five of them talked about how much fun it would be to take a vacation together. They decided to drive to Florida. They went outside to Paul’s car and drove first to Paul’s house for him to get a change of clothes and some money. They then started to drive to Florida.

After a few hours, arguments broke out. Paul was upset that Edward was fooling around with Kimmie. Edward was angry at Paul’s complaining and bad driving. Over the next few days, there were fights, mostly between Edward and Paul, and Paul got beat up pretty badly. Michael insists that he never hit Paul. Kimmie also burned Paul with her cigarettes and poked him with her pocket knife. Michael was upset about this, and told Edward to make her stop, but she did not listen. Michael doesn’t like Kimmie because she keeps calling him “retard,” but he puts up with her because Edward likes her.

Michael says that after about two days of driving, they had gotten as far as Alabama (or maybe Atlanta, he really isn’t sure). Everyone was tired and pretty disgusted with how badly the trip had turned out, so they drove back home. Everyone, including Paul shared the driving. Michael remembers Edward telling Paul not to call the police, but figured that nothing was going to happen, because it was just a bad weekend and no one really got hurt.

Michael adds that when he was arrested the police read him his rights, and he just told them the same thing he has told you.



