

SELECTED ANSWERS
JULY 2019 CRIMINAL PROCEDURE & EVIDENCE

1.

Question 1 – Selected Answer 1

The search warrant does not contain probable cause for the search of Clarence and Mary's home because it does not state the items or things to be seized with particularity. It does not give enough information of where the items are in the house either. It provides no information about what is to be found that would link them to the robbery.

Question 1 – Selected Answer 2

No. The warrant must state with particularity the information that justifies the police having probable cause. It must state, for example, that the information was from a reliable source. The warrant must also specify what property the police are searching for, where they expect to find it, and the address of the location of the search.

Question 1 – Selected Answer 3

No, the search warrant affidavit does not establish probable cause. Under the rules, a search warrant requires a sufficiently detailed description of a person or thing to be seized, its location, and sufficient probability that the item is located at the place in the warrant. The language in the search warrant is vague and insufficient to be effective.

2.

Question 2 – Selected Answer 1

No. After a defendant has been placed under custodial arrest, the officer must inform the defendant of his or her Miranda rights. Failure to do so will result in the suppression of the defendant's statements. The statements may, however, still be used for impeachment purposes.

Question 2 – Selected Answer 2

No. Having been arrested, they were entitled to receive their Miranda warnings before any questioning takes place. The arrestees must be informed of their right to remain silent, that anything they say may be used against them, and their right to counsel.

Question 2 – Selected Answer 3

No. Clarence and Mary were under custodial interrogation because they were arrested and they weren't given their Miranda warnings therefore their statements aren't admissible.

3.

Question 3 – Selected Answer 1

Within 48 hours after arrest.

Question 3 – Selected Answer 2

Clarence and Mary must be taken before a judge without unreasonable delay within 48 hours of arrest. This can be done through closed circuit tv as well.

Question 3 – Selected Answer 3

Clarence and Mary should be taken to a magistrate judge within a reasonable time, but no later than 48 hours.

4.

Question 4 – Selected Answer 1

Yes, the court should provide Clarence and Mary with a court appointed attorney if they are indigent and if there is a possibility of confinement.

Question 4 – Selected Answer 2

Yes, the court should provide a lawyer for Clarence and Mary in any adversarial hearings if their charge can result in punishment by incarceration

Question 4 – Selected Answer 3

yes, a defendant has a right to an attorney if they are facing possibly incarceration. Since this is a felony offense they are entitled to a lawyer

5.

Question 5 – Selected Answer 1

They will need separate lawyers because they may have interests adverse to each other in the case. Having separate lawyers avoid any risk of conflicts of interest in representation and ensures each defendant receives fair and adequate representation.

Question 5 – Selected Answer 2

Clarence and Mary require separate lawyers due to the risk of conflict of interest.

Question 5 – Selected Answer 3

Clarence and Mary need separate lawyers because, once charged, co-conspirators' interests typically become adverse to one another. It is very likely that the state will seek to have either Clarence or Mary testify against the other, and a lawyer cannot simultaneously represent each party's interests to the best of her ability under those circumstances.

Question 5 – Selected Answer 4

As co-defendants, their interests are adverse. An attorney should not be appointed to represent them both. Rather, each should be appointed their own attorney. An attorney shall not represent to clients with adverse interests in the same proceeding.

6.

Question 6 – Selected Answer 1

The proceeding is called an arraignment.

Question 6 – Selected Answer 2

This procedure is called an arraignment.

Question 6 – Selected Answer 3

This process is called an arraignment.

7.

Question 7 – Selected Answer 1

The court will enter a plea of not guilty. This is based on the principle of criminal law that defendants are innocent until proven guilty, and a guilty verdict is not assumed unless it is knowingly and voluntarily made (with informed consent).

Question 7 – Selected Answer 2

it will enter a plea of not guilt. Silence alone cannot be taken as a plea of guilt and therefore a no guilty plea will be entered

Question 7 – Selected Answer 3

If defendant fails to offer a plea, a plea of not guilty will be entered. Any other plea would violate defendant's right of presumed innocence.

8.

Question 8 – Selected Answer 1

No. This communication is protected by attorney-client privilege.

Question 8 – Selected Answer 2

The court will not require Clarence to answer this question because communications between a client and his lawyer made for the purposes of furthering legal representation are protected at all stages of the proceedings by the attorney-client privilege. The statements about which the prosecutor is asking are plainly protected by that privilege.

Question 8 – Selected Answer 3

No, Clarence will not be required to answer. The communications are protected under the attorney-client privilege, which protects confidential communications between a lawyer and client whenever they are made for the purpose of seeking legal advice. Clarence's discussion of the case qualifies for this privilege.

9.

Question 9 – Selected Answer 1

Yes. Lawyer has a right to this information plus all other non-privileged information in Prosecutor's files under the US and Texas Constitutions and the Michael Morton Act.

Question 9 – Selected Answer 2

Yes, the prosecutor must reveal this information. The Texas Code of Criminal Procedure states that the prosecutor must reveal, upon request, witness statements. This right is not reciprocal to the prosecutor. The prosecutor also has a duty to reveal exculpatory material that is essential to the guilt or innocence of the defendant.

Question 9 – Selected Answer 3

Yes, under Texas' open file discovery statute a prosecutor must -- upon request -- turn over non-privileged material concerning the alleged crime in its possession whether or not it is exculpatory to the defendant. Exculpatory evidence must be discovered to the defense without need of a request under the rule in Brady v. Maryland.

10.

Question 10 – Selected Answer 1

No. This discovery is not reciprocal. Lawyer does not have to provide any information except for the names of any testifying expert witnesses that she intends to use, and whether a defendant is going to plead an insanity defence.

Question 10 – Selected Answer 2

No, the Prosecutor is not entitled to the witness statements. Although the prosecutor must reveal their witness statements to the defendants, this right is not reciprocal.

Question 10 – Selected Answer 3

No, the requirement to produce materials is not reciprocal for a defense attorneys. Defense attorneys do not have an obligation to produce pre-trial materials beyond the names of expert witnesses.

11.

Question 11 – Selected Answer 1

The prosecution, upon request, has a right to the names of all testifying expert witnesses the defense plans on using at trial. As such, Lawyer must provide the information.

12.

Question 12 – Selected Answer 1

Lawyer should file a motion to sever the cases. Mary, as co-defendant, has a prior conviction. If the prosecution intends to introduce this conviction against Clarence, then the court must sever the cases in order to assure that Clarence has a fair and impartial trial.

Question 12 – Selected Answer 2

Lawyer can file a motion for severance. The court must grant the motion as there is a criminal conviction admissible against one of the criminal defendants which would undoubtedly prejudice the other.

13.

Question 13 – Selected Answer 1

In all criminal case, the state and the defendants are each entitled to an unlimited amount of "for cause" challenges. A for cause challenge is one for bias, prejudice, inability to follow the law, or other statutory reasons why a potential juror could not serve (inability to register to vote in that county; illiteracy; etc.)

14.

Question 14 – Selected Answer 1

No, Lawyer does not have to give his opening statement at that time. Lawyer may give his opening statement at the conclusion of Prosecutor's case.

Question 14 – Selected Answer 2

No. Clarence's lawyer has the option to make an opening statement immediately after prosecutor's opening statement or after prosecutor's case in chief.

15.

Question 15 – Selected Answer 1

"The Rule" on witnesses requires most witnesses (although not parties, their spouses, or experts, and sometimes not victims and guardians of victims) to be removed from the courtroom throughout the trial to minimize the risk that their testimony will be influenced by hearing the testimony of others.

Question 15 – Selected Answer 2

The Rule requires the sequestration of testifying witnesses whose testimony may be materially altered by hearing other testimony. It can require most witnesses, excluding experts who would benefit from hearing testimony, to not be present for court proceedings or discuss them unless it is with a party's attorney.

16.

Question 16 – Selected Answer 1

yes, a victim can be removed if what she hears or sees will materially affect her testimony

Question 16 – Selected Answer 2

A victim may be excluded from the court room during trial if the victim plans on testifying and their testimony would be materially altered by hearing others testify.

Question 16 – Selected Answer 3

Generally, the rule of sequestration does not apply to the victim. However, the victim may be asked to leave the court room if it is shown that their testimony may be materially affected by hearing other witness' testify.

17.

Question 17 – Selected Answer 1

The prosecutor must lay proper foundation by establishing that the camera that took the video was in proper working order, and that the video constitutes a fair and accurate depiction of the events which it purports to show.

Question 17 – Selected Answer 2

In order to admit the video into evidence, Bucky must testify that the camera was in good working condition, that the video fairly and accurately depicts the scene that was recorded, and that the video recording has not been altered in any way.

Question 17 – Selected Answer 3

The Prosecutor must establish that: the video camera was working properly, that the video camera has not been altered, and that the video is an accurate representation in what it purports to show.

18.

Question 18 – Selected Answer 1

The judge should overrule the objection because this is not hearsay under any definition, and the statement is not being offered to prove the truth of the matter asserted

Question 18 – Selected Answer 2

The court should overrule the objection. Hearsay is an out of court statement offered to prove the truth of the matter asserted. The statement is not offered for the truth of the statement because it does not matter whether the statement is true, but is being offered merely for the fact that Clarence said it to the cashier during the robbery.

Question 18 – Selected Answer 3

Overrule. This is a verbal part of the act. Thus it is not considered hearsay.

19.

Question 19 – Selected Answer 1

Judge should sustain the objection because prosecution made an improper closing argument. Defense counsel should move for a mistrial because of the improper closing argument. The defendant has an absolute right not to testify at trial, and no guilt can be inferred from a defendant remaining silent.

Question 19 – Selected Answer 2

The Judge should sustain Lawyer's objection. A defendant has the Constitutional right under the 5th Amendment to not testify if it may subject them to self-incrimination. Because Prosecutor used his Constitutionally-protected refusal to testify against him, Judge should sustain Lawyer's objection.

Question 19 – Selected Answer 3

The court should sustain the objection. A prosecutor is not allowed to comment at any point on the defendant's assertion of their 5th Amendment right against self incrimination. Therefore, this was an improper jury argument and the objection should be sustained, the comment stricken from the record, and jury told to disregard the comment.

20.

Question 20 – Selected Answer 1

Judge should grant the motion for a mistrial. Under the rules, when the jury is in deliberations, nobody may communicate with the jurors unless the jurors need clarification and seek assistance themselves. Although they were not in the jury room, they were sent to deliberate. Improper communications with jurors in deliberation are grounds for a mistrial.

Question 20 – Selected Answer 2

The court should grant the mistrial. Jurors are not allowed to converse with each other, witnesses, parties, or anyone else about the case before the verdict is read. Since the conversation occurred before the jurors deliberated, this was an improper

conversation about the case that could taint the jury, and therefore should result in a mistrial.

Question 20 – Selected Answer 3

he should grant the motion. Jurors may not discuss the case with any party until after the case is completely finished. Therefore, the judge should grant the motion for a mistrial.