

SELECTED ANSWERS
FEBRUARY 2020 CRIMINAL PROCEDURE & EVIDENCE

1.

Question 1 – Selected Answer 1

No. In Texas, oral statements are inadmissible, unless they were recorded.

2.

Question 2 – Selected Answer 1

Xavier's search of the car is not lawful. The search was a trespass and invasion of privacy.

Question 2 – Selected Answer 2

Xavier's search of the car was not lawful. Where a civilian not acting under police direction conducts a search of a suspect's property that would be unlawful if done by a police officer then that civilian's search is also unlawful.

Question 2 – Selected Answer 3

No, Xavier's search is not lawful. The search and seizure rules in Texas do not only cover acts of law enforcement, but of any person, that violate another person's right against unreasonable searches and seizures.

3.

Question 3 – Selected Answer 1

The police have 3 days excluding the date of issuance and date of execution to execute a valid search warrant. Thus, the police have up to 5 days to execute a search warrant.

Question 3 – Selected Answer 2

The police have 3 days to execute a search warrant, not including the day it is issued or delivered.

4.

Question 4 – Selected Answer 1

A grand jury is pooled by a fair cross section of the community and is similar to a petit jury.

Question 4 – Selected Answer 2

By summoning of a cross section of the community, like a petite jury

Question 4 – Selected Answer 3

The grand jury is summoned by the district judge by serving subpoena to a pool that constitute a cross-section of the community.

5.

Question 5 – Selected Answer 1

Only the grand jury is allowed to be in the deliberation rooms while deliberating. The grand jury may not invite prosecutor in its deliberation to resolve the dispute about whether to indict Zane and Yaz with robbery.

Question 5 – Selected Answer 2

No. No one is allowed to be present during grand jury deliberations except the grand jurors themselves.

Question 5 – Selected Answer 3

No. When a grand jury is deliberating no one other than the grand jurors are allowed in the grand jury room.

6.

Question 6 – Selected Answer 1

No, prosecutor may not use Zane's meeting with his lawyer as evidence of Zane's guilt. All arrestees and defendants have a right to counsel under the 5th and 6th Amendments (respectively) and seeking counsel is not an admission or evidence of guilt.

Question 6 – Selected Answer 2

No, a Prosecutor may not use the Defendant's right to counsel against the defendant in trial. This undercuts the Defendant's constitutional right to counsel.

Question 6 – Selected Answer 3

No, the Prosecutor cannot bring up the fact that Zane met with his attorney as evidence of Zane's guilt. Zane has a 6th amendment right to counsel and the constitutional right cannot be used against him to prove guilt or provide an inference of guilt. If brought up, Zane's lawyer should object file a request for a limiting instruction, or request a mistrial.

7.

Question 7 – Selected Answer 1

Prosecutor may take a deposition if the situation is that he would be unable to subpoena the witness or otherwise preserve the testimony. Since Xavier is elderly, the Prosecutor may take a deposition of him if it would be unlikely that Xavier would be able to attend trial.

Question 7 – Selected Answer 2

Prosecutor is permitted to take Xavier's deposition because he is an elderly witness and Prosecutor can request that the Court grant the deposition request in order to preserve Xavier's testimony. Xavier could be die and in order to preserve it and allow Zane to cross examine him, a deposition will be granted.

8.

Question 8 – Selected Answer 1

The same procedural rules that are contained in the Texas Rules of Civil procedure will apply during deposition.

Question 8 – Selected Answer 2

The rules of Civil Procedure will control the conduct of the depositions, so long as they do not conflict with the Texas Rules of Criminal Procedure.

9.

Question 9 – Selected Answer 1

The Lawyer can file a Motion to Sever in order to have a separate trial for Zane. Zane has an absolute right to be tried separately.

Question 9 – Selected Answer 2

Lawyer must file a motion to sever, based on the fact that Zane's rights would be prejudiced if tried together with Yaz.

Question 9 – Selected Answer 3

Lawyer must file a motion to sever. If either Zane or Yaz have a prior conviction that is admissible at trial, the court must grant the motion.

10.

Question 10 – Selected Answer 1

Lawyer and Prosecutor have unlimited challenges for cause. Because this is a non-capital felony prosecution, they will each have 10 peremptory challenges.

Question 10 – Selected Answer 2

Lawyer and Prosecutor will each have an unlimited amount of challenges for cause, that can be based on bias, prejudice, statutory reasons, and the juror's inability to carry out the law. Each party also has 10 peremptory challenges per side to carry out without explanation. Either challenge cannot be for gender, race, or age.

Question 10 – Selected Answer 3

Both sides have an unlimited amount of challenges for cause. Since this is a noncapital felony, prosecutor and lawyer are both entitled to 10 preemptory strikes each.

11.

Question 11 – Selected Answer 1

No, a member of the grand jury that indicted the Defendant may not serve on the petit jury in the case. Either lawyer may use a challenge for cause to strike him from the jury pool.

Question 11 – Selected Answer 2

No. A juror may not have been in a Grand jury that indicted the defendant. The juror must be struck for cause.

Question 11 – Selected Answer 3

No she can not. To have served in the Grand Jury as a juror is specific ground for disqualification.

12.

Question 12 – Selected Answer 1

The first step is for the prosecutor to read the indictment. The second step is for the defendant counsel to enter the plea of not guilty.

Question 12 – Selected Answer 2

The judge must first give the announcement of the ready, the prosecutor must then read the indictment, and the defendant must enter his plea before the jury.

13.

Question 13 – Selected Answer 1

Since this a felony trial, a judge can limit both the prosecuor and lawyer to an opening statement and closing staetment during the whole trial.

14.

Question 14 – Selected Answer 1

The rule of sequestration, requires all witnesses to be removed from the courtroom. Before the Judge excuses the witnesses, he must swear them in, and instruct them not to speak with anyone, but their lawyer, then he will excuse them from the courtroom.

Question 14 – Selected Answer 2

The rule of sequestration is a court order to witnesses of the present case that they cannot be present in the court room while other witnesses are testifying. Also that they may not confer with each other about their testimony, and may only speak to the lawyers that called them. They are all brought into the court first then this order is given.

15.

Question 15 – Selected Answer 1

Yes, alleged victims are subject to "The Rule" if they are going to testify and their testimony may be materially affected or influenced by the testimonies of other witnesses.

16.

Question 16 – Selected Answer 1

Prosecutor must get the wtiness to testify that the camera that took thhe recording was in good and proper working conditon on the day in question, that the footage is a fair and accurate dipiction of the store and the events on the day in question, and that, to the witness's knowledge, the footage has not been materially altered in any way.

Question 16 – Selected Answer 2

The Prosecutor must establish from the witness that he is familiar is the recording and can testify if it was working properly and what the recording actually depicts. And that the witness has some personal knowledge of the depiction and that it fairly and accurately depicts the robbery.

17.

Question 17 – Selected Answer 1

The objection should be overruled. A statement will be excluded as hearsay if it is an out of court statement, made by the declarant, and is being offered for the truth of the matter asserted. The statement made by Yaz is not being offered for its truth, it is being offered as an operative fact, thus the court will likely admit the statement.

Question 17 – Selected Answer 2

Overruled because this is not hearsay but an operative fact in the commission of the crime.

18.

Question 18 – Selected Answer 1

The court should sustain Lawyer's objection because while convictions under certain conditions may be entered into evidence, convictions that are in the appeals process may not be entered into evidence.

19.

Question 19 – Selected Answer 1

The court should sustain the objection. A Court is not allowed to comment as to the credibility of a witness. The weight of a witness's credibility is for the jury to decide.

Question 19 – Selected Answer 2

The court should sustain the objection. It is improper for the judge to comment on the weight of evidence, Xavier's testimony, to the jury. Lawyer should state this basis as his objection and request the judge to instruct the jury to disregard the comment of the weight of evidence.

20.

Question 20 – Selected Answer 1

The lawyer must object on the record and provided a specific reason as to why the Court's comment was improper and prejudicial to the Defendant. The Lawyer should request that the court strike the comment from the records and instruct the jury to disregard the comment. The Lawyer should subsequently move for a mistrial.

Question 20 – Selected Answer 2

In addition to objecting, Lawyer should state the basis of his objection, request the judge to instruct the jury to disregard the court's comment about the weight of the evidence, Xavier's testimony, and move for a mistrial and file a motion for new trial.