

YOUR ANSWERS MUST BE LIMITED TO THE 5 LINES PROVIDED AFTER EACH QUESTION. ANYTHING MORE THAN 5 LINES WILL NOT BE GRADED.

CRIMINAL PROCEDURE & EVIDENCE – July 2009

On January 2, 2009, someone broke into Aaron’s home in Houston, Texas, and stole Aaron’s big screen TV. When Aaron discovered the crime, he phoned the Houston Police Department and reported the crime to Detective Don. Based on his investigation, Detective Don had probable cause to believe that Ike had committed the crime. Detective Don then hastily obtained a warrant authorizing the search of Ike’s apartment and the arrest of Ike. When Detective Don went to Ike’s apartment, knocked on the front door, and announced that he had a warrant to search the apartment and arrest Ike, Ike yelled: “Go away, I ain’t opening the door.” Detective Don broke down the door, arrested Ike, and found Aaron’s big screen TV in Ike’s apartment.

Ike was charged with the felony of burglary of a habitation, and the Court has appointed you to represent him. You interview Ike, and he swears that he is innocent and that his roommate, George, must have committed the crime. Ike also informs you that George has a prior felony conviction for burglary of a habitation for which he presently is on probation.

- 1. Was Detective Don required by law to obtain one warrant authorizing the search of Ike’s apartment and a separate warrant authorizing the arrest of Ike? Explain fully.**

- 2. Did Detective Don have the authority to break down Ike’s door in order to enter the apartment? Explain fully.**

At Ike's examining trial, the Court refuses to set bail for Ike. You decide to file an application for a writ of habeas corpus.

- 3. What is a writ of habeas corpus? To whom is it directed? By whom may it be granted? Explain fully.**

Prosecutor is considering whether to proceed with the prosecution of Ike for the felony of burglary of a habitation or instead to prosecute him for the misdemeanor of criminal trespass, which is punishable by confinement in jail for up to one year and a fine not to exceed \$4,000.

- 4. What courts have jurisdiction to conduct a trial of Ike for burglary of a habitation, and what courts have jurisdiction to conduct a trial of Ike for criminal trespass? Explain fully.**

Prosecutor decides to seek an indictment from the grand jury.

- 5. Who selects the people who will serve on the grand jury? Explain fully.**

The grand jury indicts Ike for the felony of burglary of a habitation. On January 23, 2009, the Court notifies you that it has set a pretrial hearing for February 16, 2009. You decide to file a motion for discovery.

- 6. By what date should you file your motion for discovery? What consequence, if any, is there if you do not file your motion for discovery by that date? Explain fully.**

You timely file your motion for discovery. Prosecutor has a report in his case file stating that Ike's roommate, George, confessed to Detective Don that he alone stole Aaron's big screen TV and that Ike had no knowledge of and took no part in the crime.

- 7. Is Prosecutor required to disclose to you the contents of this report? Does your answer depend on whether your discovery motion requested disclosure of any reports in Prosecutor's possession? Explain fully.**

Prosecutor files a motion requesting that you disclose the names and addresses of all lay and expert witnesses who will testify for the defense at trial.

8. Does the Code of Criminal Procedure provide any basis for Prosecutor’s request? Explain fully.

As part of the discovery process, Prosecutor gives you a copy of the search and arrest warrant obtained by Detective Don. The only description of the appearance, location, and address of Ike’s apartment that is contained in the warrant is the following: “The apartment is located in a white building in a residential neighborhood on a street on the west side of Houston, Texas.”

9. Is this description of Ike’s apartment legally sufficient? Assuming that description is not sufficient, what procedural step can you take to challenge the warrant, and what relief should you request? Explain fully.

Ike tells you that he is considering pleading guilty to the indictment, and asks you what will occur at the guilty plea proceeding.

10. List three admonitions that the Court must give Ike before accepting his felony plea of guilty.

Ike decides that he wants a jury trial, and he asks you if he will be eligible for probation if he is convicted by the jury.

11. List three prerequisites for Ike to be eligible for a sentence of probation.

During jury selection, Prospective Juror No. 8 makes the following statements in response to your question about the presumption of innocence: “Of course I believe Defendant Ike is guilty, and nothing you say will change my mind about it. Why else would a grand jury indict him?”

12. Do these statements provide you with any basis to challenge Prospective Juror No. 8? If so, what is the legal basis of your challenge, and what kind of challenge should you make? Explain fully.

After the jury is selected, Prosecutor makes an opening statement. When you tell the Court that you will make your opening statement after the State has presented its case in chief, the Court tells you that you must make your opening statement now or waive it.

13. Is the Court correct? Explain fully.

As Prosecutor's first witness, Detective Don testifies about his investigation of Ike. When you begin your cross-examination, you move the Court to order Prosecutor to produce any transcript of Detective Don's grand jury testimony about his investigation of Ike. Prosecutor responds that he has the transcript, but will not produce it because grand jury proceedings are secret.

14. How should the Court rule on your motion for production of the transcript? Explain fully.

As his second witness, Prosecutor calls Ike's roommate, George, who admits to burglarizing Aaron's apartment. George also testifies that, even though he previously tried to protect Ike from prosecution, the truth is that Ike helped him commit the burglary. When you begin to cross-examine George about the fact that George presently is on probation, the Court cuts you off and states: "Counsel, we're not going to go into that. It's got nothing to do with this case."

15. Is the Court's ruling correct, or are you entitled to cross-examine George about his probation? Explain fully.

At a bench conference, Prosecutor informs you and the Court that his next witness, Megan Watts, will testify as follows: "On December 27, 2008, I stopped Ike in the parking lot of my electronics store as he was loading one of my store's big screen TVs into his pickup truck. Ike had taken the TV out of the store without paying for it." Prosecutor states that he is offering this testimony because "Ike's theft of a big screen TV in the past shows that he stole Aaron's big screen TV in this case."

16. What objection should you make to this testimony, and how should the Court rule on it? Explain fully.

The jury charge prepared by the Court contains a number of legal definitions and statutes pertinent to the case. You object to the Court's jury charge and request in writing that the Court include a paragraph instructing the jury regarding the circumstances under which Ike can be convicted or acquitted. The Court denies your request, stating that it does not want to confuse the jury.

17. Is the Court's ruling correct? Explain fully.

During his closing argument, Prosecutor makes the following comments:

Ladies and Gentlemen of the jury, you now have heard all of the testimony, and it shows beyond a reasonable doubt that Ike is guilty. Do you think I would risk my career and put Detective Don on the witness stand if I didn't think he was telling the truth? I've never seen anyone who was more honest than Detective Don. And when he arrested Ike and read Ike his Miranda rights, Ike just kept his mouth shut and said nothing. That in itself shows Ike is guilty. Based on this evidence, you should return a verdict of guilty.

18. On what grounds, if any, can you object to these remarks?

The jury convicts Ike of burglary of a habitation as charged in the indictment.

19. What standard of proof was the State required to meet to obtain a verdict of guilty? How many jurors had to concur in the verdict? What would have been the consequence if fewer than the minimum number of jurors voted for a verdict of guilty? Explain fully.

Ike ultimately receives a sentence of probation. Three days after Ike is sentenced, you learn that George bribed four of the jurors to convict Ike.

20. What procedural step can you take to bring this information to the attention of the trial court and to attack Ike's conviction? How long do you have to take this procedural step? Explain fully.

THIS CONCLUDES THE CRIMINAL PROCEDURE AND EVIDENCE QUESTIONS. CIVIL PROCEDURE AND EVIDENCE QUESTIONS ARE CONTAINED IN A SEPARATE BOOKLET.