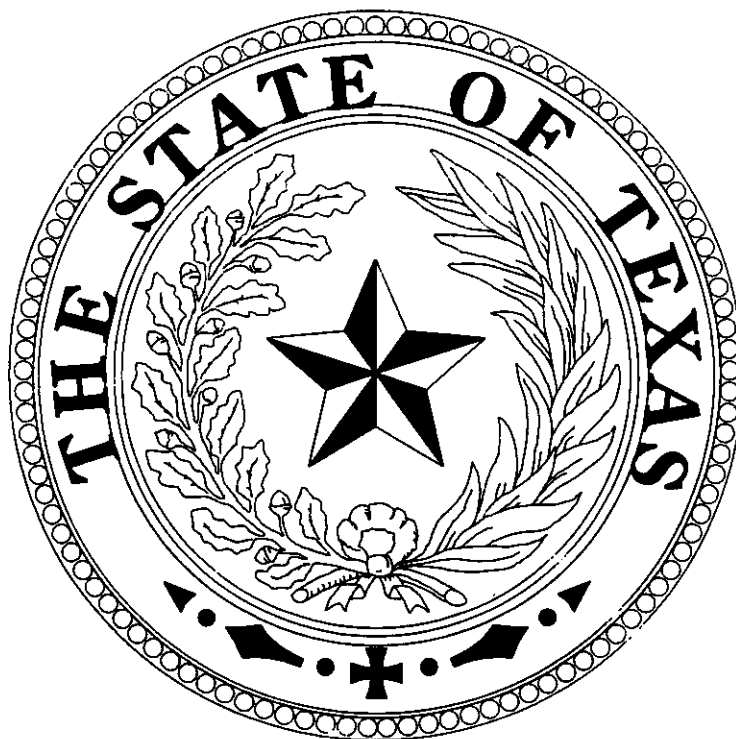


Examinee
Number

Exam
Date FEBRUARY 2011

Criminal Procedure & Evidence

[This Criminal booklet is one part of the Procedure & Evidence session. Both the Civil and the Criminal booklets must be completed during the 90 minute Procedure & Evidence testing session.]



TEXAS BAR EXAMINATION

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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

On December 26, 2010, Keith and Viggo purchased two shotguns, some ammunition, and two ski masks from a variety store ("Variety"). Viggo used a stolen credit card to pay for the items and forged the signature of the cardholder ("Cardholder") on the receipt. On December 27, 2010, in Houston, Harris County, Texas, the two men entered a convenience store ("Convenience") armed with the two shotguns and wearing ski masks that covered their faces. They pointed their weapons at Convenience's owner ("Owner") and demanded all of the money in the cash register. When Owner hesitated, Viggo knocked Owner out of the way with the butt of his shotgun. Keith picked up the cash register, and both Keith and Viggo ran out of the store. Keith was arrested two blocks from Convenience while carrying the cash register. Keith confessed that he and Viggo committed the robbery.

A complaint was filed in Harris County charging Keith and Viggo with aggravated robbery. A magistrate in Houston issued an arrest warrant for Viggo. On January 3, 2011, a police officer ("Officer") in Sugar Land, Texas, which is in Fort Bend County, received a copy of the arrest warrant for Viggo and arrested him in Sugar Land. According to routine procedure, all of Viggo's personal belongings, including the stolen credit card he used at Variety, were taken from his pockets and listed on an inventory sheet when he was booked into jail.

- 1. Was Officer authorized to arrest Viggo in Fort Bend County on the basis of an arrest warrant that was issued in Harris County? Explain fully.**

- 2. What are three requirements for an arrest warrant?**

Because it was the most expeditious way to warn Viggo about his rights, he was returned to Harris County and taken before a magistrate in Houston 36 hours after his arrest.

3. Was Viggo taken before the magistrate in a timely manner? Explain fully.

You are appointed as Viggo's attorney. At the examining trial, the prosecutor ("Prosecutor") calls Officer to testify about Owner's description of the robbery and the robbers. When you object to this hearsay testimony, Prosecutor states that this is just an examining trial, not a jury trial, and that the rules of evidence do not apply.

4. Is Prosecutor's statement correct? Explain fully.

Viggo asks you whether he can be released on bail.

5. What are three rules for fixing the amount of bail?

After a grand jury is selected, the grand jurors send for Prosecutor and ask for his legal advice concerning their investigation of Keith, Viggo, and the robbery. Prosecutor appears before the grand jurors and gives them legal advice.

6. Did the grand jurors violate the law by asking Prosecutor for his legal advice? Explain fully.

Keith and Viggo are charged in the same indictment with acting together to commit aggravated robbery against Owner at Convenience on December 27, 2010, in Houston, Harris County, Texas.

7. Was the grand jury required to charge Keith and Viggo individually in two separate indictments with aggravated robbery? Explain fully.

Prosecutor thinks Owner will not recover from his injuries and be able to testify at trial. However, Cardholder will be available to testify at trial. Prosecutor files a motion to amend the indictment to charge Viggo with the state jail felony of credit card abuse for using the stolen credit card at Variety. You object to Prosecutor's motion.

8. How should the Court rule on Prosecutor's motion? Explain fully.

Prosecutor informs you that he intends to introduce the stolen credit card into evidence at trial. You file a motion to suppress this evidence arguing that Viggo did not consent to the search of his property and that there was no search warrant for Viggo's property.

9. How should the Court rule on your motion to suppress? Explain fully.

Viggo tells you that he really wants to be placed on community supervision if he is convicted of the aggravated robbery charge because he needs to work to support his wife and children.

10. Should Viggo have the judge assess punishment? Explain fully.

11. If Viggo chooses to have the jury assess punishment, what procedural step must you take to accomplish this, and by what deadline must you take that step? Explain fully.

12. If a jury assesses punishment, can it place Viggo on deferred adjudication? Explain fully.

Viggo asks you to negotiate a plea agreement in which Prosecutor agrees to recommend a prison sentence of only a few years.

13. If Prosecutor agrees to recommend a specific prison sentence as part of the plea agreement with Viggo, is the Court required to impose that sentence? Explain fully.

Viggo decides that he wants a trial.

14. If Viggo has a jury trial and is tried alone, how many peremptory challenges to prospective jurors may Viggo and Prosecutor each make? If Keith and Viggo are tried together, how many peremptory challenges may Viggo, Keith, and Prosecutor each make? Explain fully.

15. What are three challenges for cause that may be made by the State or the defendant to prospective jurors?

Keith decides to cooperate with Prosecutor, and Prosecutor calls him as his first witness at trial. Keith testifies that he and Viggo purchased the two shotguns, the ammunition, and the two ski masks at Variety and subsequently went to Convenience and robbed Owner. During Keith's testimony, Prosecutor also introduces into evidence Keith's shotgun, his ski mask, and the cash register.

16. Can Viggo be convicted on the basis of this evidence? Explain fully.

Prosecutor calls as his next witness, Variety's custodian of records in order to introduce into evidence the credit card receipt for the purchase of the shotguns, ammunition, and ski masks.

17. What evidentiary predicate must the custodian of records provide in order for the receipt to be admitted into evidence? Explain fully.

Prosecutor intends to call as his next witness a man named "Lefty," who will testify as follows:

Four of us were involved in the robbery: me, Keith, Viggo, and a guy named "HurtU." HurtU said: "Viggo, here's a stolen credit card. Go to Variety and buy the weapons. Then rob Convenience on December 27th because the store usually is not crowded between Christmas and New Year's Day. Lefty, you stand outside as a lookout, and Keith and Viggo, you guys go inside and get the money in the cash register." We pulled off the robbery just like HurtU told us.

You object to the admission of Lefty's testimony into evidence.

18. How should the Court rule on your objection? Explain fully.

At the end of trial, Viggo is convicted of aggravated robbery as charged in the indictment.

19. Describe two situations in which a judge is not required to direct a probation officer to prepare a presentence report in a felony case. Explain fully.

Before punishment is assessed, the Court permits Owner to appear in person and present a statement to the Court and Viggo about the effect that the offense had on him as a victim. You object to this procedure, but the Court overrules your objection. After Owner makes his statement, Viggo is sentenced to serve ten years in prison.

20. Was the Court's ruling on your objection correct? Explain fully.

DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.

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