

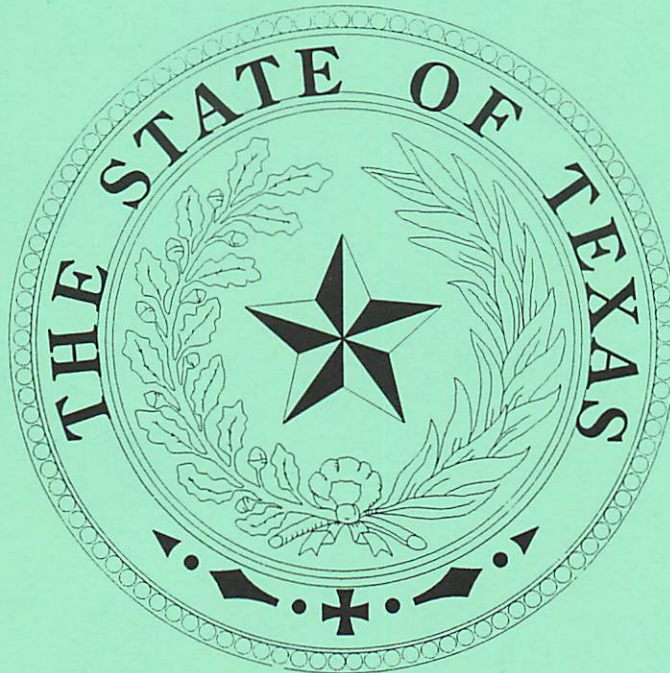
Examinee
Number

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July 2012

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

Hank, Bobby, and Suzie were friends and resided in Harris County, Texas. Hank had a prior felony conviction for aggravated assault. Suzie had no criminal record and was a straight-A college student. Hank had Bobby drive him to Suzie's apartment. When Suzie answered her apartment door, Hank told Suzie he loved her and asked her to run away with him. Suzie refused, but Hank pulled a handgun from his waistband and forced her into Bobby's car. Bobby was shocked by all of this, but followed Hank's instructions to "shut up and drive." Hank, Bobby, and Suzie drove to Tarrant County, Texas, and spent the night in a motel room.

The next morning, a Tarrant County Sheriff's Deputy ("Deputy") spotted Hank in the motel parking lot with the handgun in his waistband. Deputy arrested Hank for the Class A misdemeanor of unlawfully carrying a weapon. Deputy next reached into Hank's shirt pocket and confiscated a piece of paper that had his motel room number on it. When Deputy knocked on the motel room door, Suzie opened it and told Deputy she had been kidnapped by Hank and Bobby. Deputy found Bobby in the motel lobby and arrested him for the first-degree felony of aggravated kidnapping. Deputy searched Bobby's car pursuant to a Tarrant County Sheriff's policy, which provides: "Any vehicle may be searched and its contents inventoried and seized at the sole discretion of a Deputy in order to discover evidence of a crime." Deputy opened a closed backpack in the trunk of the car and found a rope and duct tape.

1. Was Deputy required to obtain an arrest warrant to arrest Hank? Explain fully.

2. What are three of the requirements that had to be met for Deputy to legally make a warrantless arrest of Bobby?

Hank and Bobby are each charged by a complaint with aggravated kidnapping. Hank hires an attorney, and you are appointed to be Bobby's attorney.

3. Where may or must the prosecution of Hank and Bobby for aggravated kidnapping take place?

A magistrate holds an examining trial on the aggravated kidnapping charge against Bobby, but his jailors leave him in his jail cell instead of bringing him to court.

4. Is it permissible to conduct the examining trial in Bobby's absence? Explain fully.

Bobby demands that he have an opportunity to tell his side of the story to the magistrate at his examining trial. You advise Bobby that, to do this, he will be required to testify under oath.

5. Is your advice to Bobby correct? Explain fully.

By order of the Court, an officer summoned persons for service on a grand jury to investigate and consider Suzie's kidnapping. Your investigation discovers, however, that this officer acted corruptly in summoning many of these people.

6. **What procedural step, if any, should you take in light of the officer's actions? If there is such a procedural step, when should you take it? Explain fully.**

Hank and Bobby are charged in the same indictment with having committed the first degree felony of aggravated kidnapping, by abducting Suzie by use of a deadly weapon. You locate a witness who will testify that Suzie voluntarily ran away with Hank to marry him.

7. **Prior to trial, what procedural step, if any, can you take to have the Court dismiss the indictment based on the insufficiency of the evidence to convict Bobby? Explain fully.**

Bobby is considering pleading guilty. You negotiate an extremely lenient plea bargain and ask the prosecutor ("Prosecutor") not to let Suzie know about it.

8. **If Bobby pleads guilty, will Prosecutor be able to get through the guilty plea proceeding without letting the Court know whether Suzie has been told about the plea agreement? Explain fully.**

Bobby has no prior criminal record. The Court has ruled that Prosecutor will be allowed to introduce Hank's prior aggravated assault conviction at the trial of Hank and Bobby.

9. What procedural step, if any, can you take on Bobby's behalf to try to avoid the introduction of Hank's prior conviction? Explain fully.

Bobby decides he wants to go to trial, and he asks you whether he will have a better chance of getting community supervision at a trial to the judge or a trial to the jury.

10. What is your advice to Bobby? Explain fully.

Hank's attorney files a motion to prohibit Prosecutor from introducing into evidence the piece of paper that Deputy took from Hank's pocket on the ground that it was obtained as a result of an illegal search.

11. How should the Court rule on this motion? Explain fully.

Prosecutor also intends to introduce into evidence the rope and duct tape that were found inside of the backpack in Bobby's car.

12. What procedural step, if any, can you take to try to keep these items from being introduced into evidence, and on what legal ground, if any, can you do so? Explain fully.

Prosecutor's case file includes Suzie's sworn written statement in which Suzie says that she used to be in love with Hank and wanted to run away with him.

13. Is Prosecutor required to disclose Suzie's sworn written statement to you? Explain fully.

Prior to trial, you make an application for a subpoena for the motel clerk who was on duty when Bobby was arrested.

14. List three things that you are required to state in your application for a subpoena.

During jury selection, you request to ask prospective jurors one or two questions. The Court rules that your proposed questions are proper, but refuses to let you ask them because the Court's practice is to conduct voir dire without any participation by attorneys.

15. Is the Court's practice consistent with Texas law? Explain fully.

After the jury is selected and sworn, you discover that one of the jurors has previously been convicted of a felony.

16. What should you do to preserve this error for appeal, and when should you do it? Explain fully.

At trial, Prosecutor's first witness is Dr. Sam, who treated Suzie for abrasions on her wrists within an hour after Deputy discovered her in the motel room. Dr. Sam testifies that Suzie told him that the abrasions were caused by the rope that Hank had tied around her wrists. You object to this testimony on the ground that it is hearsay and request that the Court strike it.

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

During the trial, Suzie testifies that she never liked Hank and never wanted to run away with him. On cross-examination, you start to ask Suzie about her sworn written statement in which she said that she used to be in love with Hank and wanted to run away with him. Prosecutor objects that you cannot ask Suzie about her sworn written statement because it is hearsay.

18. How should the Court rule on Prosecutor's objection? Explain fully.

You decide you want the jury to acquit Bobby based on the defense of duress.

19. What procedural step can you take to give the jury that option? How can you preserve the issue for appeal if the Court prohibits the jury from considering that option? Explain fully.

Hank and Bobby are convicted and sentenced to serve a number of years in prison. Two days after the trial, a local newspaper quotes the following statement by one of the jurors: "During deliberations, I used my cell phone to call my cousin, who is a prosecutor. Based on what he knew about the case and his opinion that Hank and Bobby were guilty, all of the jurors voted to convict Hank and Bobby."

20. Is there a procedural step by which you can bring this matter to the trial court's attention? If there is such a procedural step, when should you take it? Explain fully.

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

