

Examinee
Number

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July 2015

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

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

Arnie, who is not a police officer, stole a police officer's uniform. Arnie is 5'8" in height, has brown hair and brown eyes, and drives a brown 2013 Chevrolet sedan. At 4:00 p.m. on July 30, 2014, Arnie used his Chevrolet sedan to stop Steve on the local highway. Dressed in the police officer's uniform, Arnie approached Steve's vehicle and told him, "Because I am a nice police officer, I will let you go if you give me \$50 in cash." Steve gave Arnie a \$50 bill and was allowed to leave.

An hour later, Deputy Constable Jones stopped Steve for speeding. Steve told Deputy Jones, "Look, the last officer forced me to give him a \$50 bill. I am out of money, and so you can just issue me a citation." When Deputy Jones questioned Steve about the officer, Steve described Arnie as "not too tall, but not too short, with brown hair and brown eyes, driving a late model dark sedan."

Two hours later, Deputy Jones saw Arnie dressed in civilian clothes and standing next to his Chevrolet sedan in a parking lot. Deputy Jones approached Arnie, handcuffed him, patted him down, and put his hand in Arnie's pocket. He pulled a \$50 bill out of Arnie's pocket and then arrested Arnie and searched his Chevrolet sedan. Deputy Jones found a police uniform under the driver's seat.

The next day, Deputy Jones met with Steve, showed him a picture of Arnie, and told him how he had apprehended Arnie and discovered the police uniform in his Chevrolet sedan. Deputy Jones asked Steve if the picture of Arnie looked like the man who had taken the \$50 bill from him, and Steve said that it did.

Arnie was charged by a criminal complaint with the third-degree felony of impersonating a public servant. You have been appointed to represent Arnie.

1. Within what amount of time must Arnie be brought before a magistrate?

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When you meet with Arnie, he tells you that he has no money, but that he wants to be released from jail.

2. Is there a way that a person charged with a felony can be released from jail if he has no money and cannot secure a surety? Explain your answer.

Arnie was arrested by Deputy Jones in Fort Bend County, Texas. Arnie stopped Steve in Brazoria County, Texas. Arnie resides in Harris County, Texas. Steve resides in Galveston County, Texas.

3. In what county or counties is venue proper for the prosecution of Arnie for impersonating a public servant? Explain your answer.

4. Which of the following courts, if any, have jurisdiction over Arnie's offense of impersonating a public servant: (a) a district court; (b) a county court; or (c) a municipal court? Explain your answer.

You learn that selection of a grand jury to investigate Arnie began recently, but that the grand jurors summoned were not those who were selected by the jury commissioners.

5. Is there any procedural step that you can take at this early stage of the prosecution to complain about the grand jury proceedings? Explain your answer.

Arnie is indicted for the third-degree felony of impersonating a public servant. You believe that the indictment does not charge that Arnie committed an offense against the law.

6. What procedural step, if any, can you take to bring this apparent defect to the Court's attention? If there is such a procedural step, when should you take it?

Arnie asks you if he can receive either deferred adjudication or probation for his offense and what the difference is between the two.

7. What are two ways in which deferred adjudication differs from probation?

Arnie decides to plead guilty. Halfway through the guilty plea proceeding and after Arnie has pleaded guilty, he tells the Court, "I do not want to enter a guilty plea any more. I want to take it back."

8. Can Arnie withdraw his guilty plea? Explain your answer.

Regardless of whether it is legal or permissible for Arnie to withdraw his guilty plea, assume that he does withdraw it and that he decides to have a jury trial. The prosecutor ("Prosecutor") tells you that he intends to call Deputy Jones as a witness to testify that he found the \$50 bill in Arnie's pocket and the police uniform in his Chevrolet sedan.

9. What procedural step can you take to try to prohibit Prosecutor from introducing this testimony and the uniform into evidence at trial? What arguments can you make in support of such a procedural step?

Prosecutor next tells you he intends to call Steve as a witness to testify that Arnie is the person who was wearing a police officer's uniform, who stopped him on July 30, 2014, and who forced him to pay \$50 in order to be allowed to leave.

10. What procedural step can you take to try to prohibit Prosecutor from introducing this testimony? What argument can you make in support of such a procedural step?

You learn that there was a witness to the arrest of Arnie in the parking lot. For various reasons, you want to obtain the testimony of that witness prior to trial.

11. What procedural step can you take to try to accomplish this, and what must you show?

Prior to trial, Prosecutor tells you that a witness who saw Arnie stop Steve stated that he did not see Arnie wearing a police officer's uniform at the time.

12. What procedural step can you take to ensure that this witness is present at trial to testify? What are two things that you must state as part of that procedural step?

You and Arnie appear for jury selection in his case. During voir dire, you learn that a prospective juror served on the grand jury that indicted Arnie in this case.

13. What procedural step, if any, should you take to object to placing this person on the jury? Explain your answer.

The Court decides that two alternate jurors will be selected, and the Court gives you and Prosecutor one additional peremptory challenge each because of that. When you begin selecting the alternate jurors, you still have two other peremptory challenges that you did not exercise during the selection of the other jurors.

14. How many peremptory challenges may you exercise in the selection of the alternate jurors? Explain your answer.

At the beginning of trial, Prosecutor chooses not to make an opening statement. You approach the bench and request to make an opening statement before Prosecutor calls his first witness to testify. The Court denies your request.

15. Does the Court's ruling violate the law? Explain your answer.

Prosecutor calls Steve as his first witness. During your cross-examination, you get Steve to admit he thought the man in the police uniform who stopped him was much heavier than Arnie. Prosecutor tells the Court he has three witnesses who each will testify that they were stopped by Arnie from 9:00 a.m. to 11:00 a.m. on July 30, 2014, that Arnie was wearing the same police uniform, was driving the same brown Chevrolet sedan, and said: "Because I am a nice police officer, I will let you go if you give me \$50 in cash." You object to any testimony by these witnesses, but the Court overrules your objection.

16. Is the Court's ruling correct? Explain your answer.

Prosecutor's next witness, Fred Cooks, begins to testify that he saw Arnie meet with William French, an attorney, in front of Mr. French's office at 5:00 p.m. on July 30, 2014. You object to this testimony, but Prosecutor responds that the testimony shows Arnie's guilty state of mind. The Court overrules your objection.

17. Is the Court's ruling correct? Explain your answer.

Prosecutor calls as his next witness Celia Carr, the owner of Crown Chevrolet, to testify that Arnie is the owner of a brown 2013 Chevrolet sedan and that he purchased it from her. Prior to trial you learned that Ms. Carr's only criminal conviction is a 2011 felony conviction for theft. You also learned that she was sentenced to probation and that she satisfactorily completed her probation in 2013. When you begin to cross-examine Ms. Carr about her conviction and probation, Prosecutor objects, and the Court sustains the objection.

18. Is the Court's ruling correct? Explain your answer.

At the close of the evidence, you ask the Court to instruct the jury as follows: "Academic studies have shown eyewitness testimony to be unreliable, and you should weigh Steve's identification of the person who stopped him on July 30, 2014, with great caution and care." Prosecutor objects to this instruction.

19. How should the Court rule on Prosecutor's objection? Explain your answer.

Arnie is convicted of impersonating a public servant and is sentenced to serve 5 years in prison. Arnie subsequently writes a letter to the Court complaining that he rejected a pretrial plea agreement that had offered him one year in jail. Arnie's letter complains that you incorrectly advised him that impersonating a public servant was a Class A misdemeanor and that he could not be sentenced to more than one year in jail even if he were convicted after a trial.

20. If Arnie's letter is true, does he have any remedy now that he has been convicted after a jury trial? Explain your answer.

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.

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