

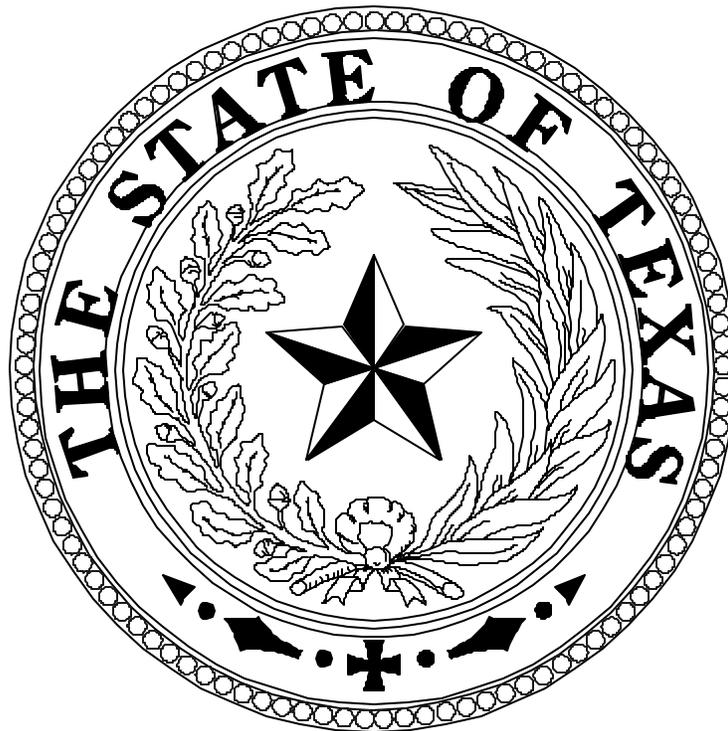
Examinee
Number

Exam
Date

July 2006

Criminal Procedure & Evidence

[This Civil 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

COPYRIGHT © 2006 TEXAS BOARD OF LAW EXAMINERS

THIS MATERIAL, OR ANY PORTION HEREOF, MAY NOT BE REPRINTED WITHOUT THE ADVANCE WRITTEN PERMISSION OF THE TEXAS BOARD OF LAW EXAMINERS

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

Defendant was arrested following the execution of a search warrant at his business. A search of a safe at the business revealed what appeared to be illegal controlled substances, \$95,000 in cash, and a switchblade knife. All of those items were seized and Defendant has been charged with possession with intent to deliver Methamphetamine in an amount between 4 and 200 grams and possession of a prohibited weapon.

You are appointed to represent Defendant.

Prosecutor informs you that the Smith County grand jury will meet next week to consider indictments against Defendant.

- 1. Can Prosecutor compel Defendant to testify before the grand jury? What rights does Defendant have regarding an appearance before the grand jury? Explain fully.**

On the day the indictment against Defendant is returned, the Court notifies you that you must file and present any pre-trial motions within the following three days.

- 2. Can the Court compel you to file and present your pre-trial motions under the circumstances outlined above? Explain fully.**

As you prepare your case for trial, you review the affidavit for the search warrant.

3. What three facts must the affidavit set forth to establish probable cause?

You conclude that the search warrant is defective.

4. What motion should you file to contest the validity of the search? What must the motion allege and what remedy should you seek? Explain fully.

The Court conducts a pre-trial hearing on your motion. Following that hearing, the Court grants the relief you requested. Prosecutor immediately announces that she will appeal the Court's order.

5. Is the State entitled to pursue an interlocutory appeal in this instance? If so, what requirements must be met by the State in order to do so? Explain fully.

You also learn that Defendant gave police a post-arrest written, signed statement denying his involvement in this offense. You request that Prosecutor provide you a copy of the statement. Prosecutor refuses your request, claiming work product privilege.

6. Is Prosecutor required to provide you a copy of Defendant’s statement? Explain fully.

You file a pre-trial discovery motion requesting a list of all of the State’s witnesses. Prosecutor files a reciprocal motion requesting a list of all defense witnesses.

7. How should the Court rule on the State’s motion? Explain fully.

Defendant elects to have a jury trial and instructs you to file an application for probation on his behalf.

8. List three requirements of a proper application for felony probation.

Defendant decides to plead guilty to the lesser included offense of possession of Methamphetamine 4-200 grams.

- 9. List three admonishments that the Court must give Defendant before accepting his felony plea of guilty.**

Defendant changes his mind and elects to try both stages of his case to a jury.

When the jury panel of 42 is assembled, you note that several police officers and a former bar examiner are among the first 15 venire persons. You believe that these individuals may not be favorable defense jurors.

- 10. What action, if any, can you take to change the seating order of the venire persons? At what stage of the proceeding should you take this action? Explain fully.**

During your voir dire of the jury panel, you conclude that several prospective jurors are legally unfit to serve on the jury. You challenge them for cause.

11. List five challenges for cause which may be made by either the State or the defense.

After the jury is seated, Prosecutor delivers her opening statement. In that statement, she tells the jury as follows:

PROSECUTOR: I also expect the evidence to show that Defendant knows full well that he is guilty of this offense. He knows that because he wanted to plead guilty in exchange for our plea bargain...

DEFENSE LAWYER: Objection!

COURT: What is your objection counsel?

12. What is the proper objection to Prosecutor's statement? How should the Court rule? Explain fully.

The State's first witness is Officer, who executed the search warrant. After he has testified on direct examination, the following exchange occurs:

COURT: Counsel, you may proceed.

DEFENSE LAWYER: Your Honor, the defense now moves for the production of Officer's report for use during cross-examination.

PROSECUTOR: We object. The request is untimely. Counsel should have asked for the report at pre-trial. We refuse to produce the report.

13. How should the Court rule on Prosecutor’s objection? What sanctions may the Court impose if Prosecutor refuses to produce the statement? Explain fully.

The State’s next witness is Convict, who intends to testify that he has previously been involved with Defendant in several illegal drug transactions. You request that the Court consider the admissibility of Convict’s testimony in a hearing conducted outside the presence of the jury.

14. What ground, or grounds, should you raise in your effort to exclude Convict’s testimony? Explain fully.

On your cross-examination of Convict, the following exchange occurs:

DEFENSE LAWYER: It is true, is it not sir, that you were convicted of robbery in Harris County, Texas, in June of 2000?

PROSECUTOR: Your Honor, we object. That conviction is remote since it occurred 6 years ago.

COURT: Overruled. The witness is directed to answer the question.

15. How should the Court rule on Prosecutor's objection? Would the ruling be different if Convict's conviction is still on appeal? Explain fully.

The State's next witness is Expert, who intends to testify regarding his opinion that the substance seized during the search is indeed Methamphetamine. The following exchange occurs:

PROSECUTOR: Your Honor, the State next calls Expert, a forensic chemist.

DEFENSE LAWYER: We request that the jury be retired in order to conduct a voir dire examination of this witness.

COURT: Denied. You can examine him in the presence of the jury. You have wasted enough time.

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

As its last witness, the State calls Defendant. The following exchange occurs:

PROSECUTOR: Your Honor, the State of Texas calls Defendant. Only he can tell us what really happened.

DEFENSE LAWYER: Objection, your honor. Prosecutor knows full well that she cannot call Defendant to testify.

COURT: Objections sustained.

17. Is the Court’s ruling correct? Even if the Court’s ruling is correct, what, if anything, must you do further to preserve any issue of prejudice on appeal? Explain fully.

After the State rests, the following exchange occurs:

DEFENSE LAWYER: Your Honor, the State has rested, and prior to calling my first witness, I now wish to make a brief opening statement to the jury.

COURT: Your request is denied as untimely. Let’s proceed.

18. Is the Court’s ruling correct? Explain fully.

As your first witness you intend to call Associate, who was Defendant’s business partner at the time of the offense. Although properly subpoenaed, Associate refuses to appear, saying “he doesn’t want to get involved.”

19. What action should you take in response to Associate’s non-compliance with your subpoena? Explain fully.

In a desperate last-ditch effort to save himself, Defendant takes the stand in his own behalf. On cross-examination, the following exchange occurs:

PROSECUTOR: Mr. Defendant, although you now deny that you are guilty of this offense, that’s not what you told your lawyer’s paralegal is it? Didn’t you admit this whole sorry episode to her?

DEFENSE LAWYER: Objection, your Honor.

20. On what grounds should you object to this question? How should the Court rule? 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.