

## **SELECTED ANSWERS – FEBRUARY 2019 CRIMINAL PROCEDURE & EVIDENCE**

### **1. In which county or counties can Billy be indicted for stealing the horse and the gun? Explain your answer.**

#### Question 1 – Selected Answer 1

Bexar County and Galveston County. Venue is proper where each element of the crime took place. Because he had stolen the horse and gun in Galveston county, and rode to Bexar County, venue is proper in either county.

#### Question 1 – Selected Answer 2

Billy can be indicted in either Bexar or Galveston county as a substantial amount of the theft occurred in both counties. Billy stole the horse and gun while in Galveston County, and transported stolen goods into Bexar County.

#### Question 1 – Selected Answer 3

Billy may be indicted in Galveston Co. & any other county he travelled through all the way to including Bexar Co. Venue is proper in the county where a significant portion or events associated with the offense occurred. Here, the gun and horse were stolen in Galveston Co. & he was arrested with the stolen property in Bexar County.

### **2. Can the police arrest Wyatt and Billy without an arrest warrant? Explain your answer.**

#### Question 2 – Selected Answer 1

Yes. A police officer can make an arrest without a warrant when an offense is committed in their presence. Here, the police officer was given information from a credible source, and when he arrived, he found Wyatt and Billy in possession of stolen goods. Therefore, the probable cause and warrantless arrest was proper.

#### Question 2 – Selected Answer 2

Yes, the police can arrest Wyatt and Billy without an arrest warrant to due to exigent circumstances. The police were tipped off by a private citizen and Wyatt and Billy could have escaped without arrest.

#### Question 2 – Selected Answer 3

Yes, Wyatt and Billy were lawfully arrested without a warrant. They were found in possession of stolen property and had committed a felony in the presence of a police officer. When the officer arrived and found them committing a felony, about to escape, and in possession of stolen property he did not need an arrest warrant. The arrest was lawful.

### **3. How soon must Wyatt and Billy be taken for magistration?**

#### Question 3 – Selected Answer 1

No less than 48 hours, but with unnecessary delay.

#### Question 3 – Selected Answer 2

Wyatt and Billy must be taken before a magistrate judge with 48 hours of arrest.

Question 3 – Selected Answer 3

Billy and Wyatt should see a magistrate within a reasonable time, but no more than 48 hours after the arrest.

**4. List at least three matters regarding which the magistrate must advise Wyatt and Billy?**

Question 4 – Selected Answer 1

The magistrate must warn Wyatt and Billy that:

1. they have the right to an attorney
2. they have right to have counsel appointed if they cannot afford one themselves
3. they have the right to remain silent
4. since this was a warrantless arrest, there will also be a probable cause finding

Question 4 – Selected Answer 2

The magistrate must advise Wyatt and Billy of their rights to remain silent, their rights to counsel, and the magistrate must inform them of the charges against them and their rights to plea.

Question 4 – Selected Answer 3

The magistrate should warn them of their Miranda rights. The magistrate should set bond. They should also be advised of their charges and the range of punishment associated with the charges. They can remain silent and not make a statement, a statement could be used against them, right to an attorney, right to not speak with police.

**5. Who, besides a court, may take the defendants' bail bond in the amount set by the magistrate?**

Question 5 – Selected Answer 1

Any peace officer, sheriff, or jailer may take the bail bond set by the magistrate.

Question 5 – Selected Answer 2

Any peace officer, or bail bondsman official may take the defendants' bail bond.

Question 5 – Selected Answer 3

A police officer, a sheriff, or a licensed jailer may accept and set bail.

**6. How is a grand jury formed? Explain your answer.**

Question 6 – Selected Answer 1

A grand jury is formed the same way a petit jury is formed, from a fair cross section of the community. It is comprised of voters who report to petit jury duty from a list of qualified voters in the county and those who have driver's licenses.

Question 6 – Selected Answer 2

A grand jury is randomly summoned and selected from a fair cross-section of the community in the same manner of a petit jury.

Question 6 – Selected Answer 3

A grand jury is formed in the same manner as a civil petit jury. A district judge summons a section of people from the community.

### **7. What procedure must Lawyer follow to obtain discovery? Explain your answer.**

Question 7 – Selected Answer 1

Lawyer must file a motion for discovery 7 days before the pretrial hearing and request the information that he wants from the State.

Question 7 – Selected Answer 2

Lawyer must make a discovery request to Prosecution for production of all documents, tangible evidence, offense reports, witness statements regarding Billy.

Question 7 – Selected Answer 3

In a criminal case the prosecution has an obligation to provide discovery to the defendant. Including police reports. Lawyer can also file a motion with the court requesting discovery.

### **8. Must Prosecutor provide this information? Explain your answer.**

Question 8 – Selected Answer 1

Yes. The prosecutor is required by law to turn over offense reports, statements made by the defendant, witness statements, and law enforcement officer's statements. The state does not have to turn over tangible things, but it must provide Lawyer with ability to inspect it himself.

Question 8 – Selected Answer 2

Yes, Prosecutor must provide this information as the State must turn over any evidence about a criminal defendant.

Question 8 – Selected Answer 3

Under Texas law, defendant is entitled to a copy of the police reports, witness statements, law enforcement officers, and access to tangible things relevant to the case. State has legal duty to turn over exculpatory information without being asked. A written statement of a witness is not required to be disclosed until after the witness has testified but i

### **9. Must Lawyer provide the requested discovery items? Explain your answer.**

Question 9 – Selected Answer 1

No. The discovery responsibility is not reciprocal. The defendant need only turn over names of testifying expert witnesses, if requested.

Question 9 – Selected Answer 2

No, Lawyer is not required to provide the requested discovery items as defense's counsel.

Question 9 – Selected Answer 3

The defense is not required to turn over any discovery to the State. One exception is information for expert witnesses the defense intends to call. That must be disclosed. Defense should ask for notice of prior bad acts.

**10. Must Lawyer provide the names? Explain your answer.**

Question 10 – Selected Answer 1

Yes, lawyer must provide the names of the expert witnesses he intends to call prior to trial.

Question 10 – Selected Answer 2

Yes, Lawyer must provide the names of expert witnesses to Prosecution. This is a permissible discovery request prior to trial.

Question 10 – Selected Answer 3

Yes, the defense is required to provide the names of testifying experts to the State prior to trial. If he fails to turn over the information, the expert witness can be precluded from testifying.

**11. What procedure can Lawyer use to get a separate trial for Billy? Explain your answer.**

Question 11 – Selected Answer 1

Lawyer should file a motion to sever. He should argue that because Wyatt has a prior conviction, his client runs the risk of being guilty by association with Wyatt. Wyatt's prior conviction is unfairly prejudicial to Billy.

Question 11 – Selected Answer 2

Lawyer can file a motion for severance in order to get a separate trial for Billy. Co-defendants' counsel may request a motion for severance if there is a showing that one defendant would be unfairly prejudiced by the other's prior convictions.

Question 11 – Selected Answer 3

Lawyer can file a motion to sever. If granted the court will have separate trials for Billy and Wyatt. Because Wyatt has a prior conviction that could come in at his trial, that entitles Billy to a severance so he is not unduly prejudiced with this at his trial.

**12. How many challenges for cause are Lawyer and Prosecutor each permitted? Explain your answer.**

Question 12 – Selected Answer 1

Each side gets an unlimited number of challenges for cause. Because this is a felony trial, both Billy and the State will get 10 peremptory strikes.

Question 12 – Selected Answer 2

Lawyer and Prosecutor are permitted unlimited challenges for cause. Challenges for cause are unlimited when based on a potential juror's bias, prejudice, prior service on defendant's trial, or inability to carry out the constitutional requirements of jury duty.

Question 12 – Selected Answer 3

There is no limit to the number of challenges for cause for either the defense or the State. Challenges for cause can be based on bias, prejudice, or some other factor that makes them unsuitable to serve (felony or theft convictions). No strikes can be based on race or gender.

**13. What are the first two steps in a criminal trial?**

Question 13 – Selected Answer 1

The indictment is read out loud in open court, and then Billy will enter his plea of Not Guilty (or guilty, which would bring the case to a quick end).

Question 13 – Selected Answer 2

The first two steps in a criminal trial are the reading of the charge (indictment, information, etc.) and the entering of a guilty plea.

Question 13 – Selected Answer 3

In a criminal trial the first steps are the indictment is read to the jury and the defendant enters a plea of not guilty. If they forget to do this it can be done later in the trial and the evidence re-presented to the jury or the parties can stipulate to the evidence they already heard.

**14. Must Lawyer give his opening statement at that time? Explain your answer.**

Question 14 – Selected Answer 1

No. Lawyer can choose to give his opening statement either immediately after the prosecutor, or at the beginning of his case in chief.

Question 14 – Selected Answer 2

Lawyer is not required to give his opening statement directly following Prosecutor's opening statement. Lawyer can wait until after Prosecutor's case-in-chief or give his opening statement directly before his case-in-chief.

Question 14 – Selected Answer 3

No, the defense attorney is not required to make an opening statement after the prosecutor. The state has the burden of proof, not the defendant. And the state gets the last word. The defense attorney can make an opening statement at the conclusion of the state's case if he chooses.

**15. What does it mean to invoke “the rule”? Explain your answer.**

Question 15 – Selected Answer 1

This is the rule of witness sequestration. It requires all witnesses (except the defendant) to exit the courtroom, and they are prohibited from speaking with anyone (other than their own lawyer)

about the trial. A victim may also be excluded if the judge believes that her testimony may be materially affected by what she sees and hears in the courtroom.

Question 15 – Selected Answer 2

Invoking "the rule" of sequestration is requesting that all witness be removed from the courtroom during other witnesses testimony. Prior to their exit, they must be sworn in, and instructed to not speak to anyone other than counsel.

Question 15 – Selected Answer 3

The Rule of Sequestration is a rule that can be invoked by either party or the court. It requires witnesses who will testify to leave the courtroom & not speak with each other. Experts can be excused from the rule and allowed to sit in the courtroom during testimony.

**16. May a complainant be excluded from the courtroom during trial? Explain your answer.**

Question 16 – Selected Answer 1

Yes. A complainant may be excluded from the courtroom if the judge believes that their testimony will be materially affected by what she sees or hears from the trial.

Question 16 – Selected Answer 2

Yes, complainant who couple as victims may excluded from the courtroom during trial if their tesimony would be materially affected. They must also be sworn in prior to exiting, and instructed to not speak to any others outside of counsel.

Question 16 – Selected Answer 3

The complaintant or victim in a case is not automatically exempt from the rule and can be excluded. However, the court can waive the rule for victims if listening to testimony of others will not materially affect or change their own testimony. It will have to be decided in each case. If the victim is not testifying then the rule wouldnt apply either.

**17. How should Judge rule on Lawyers's objection? Explain your answer.**

Question 17 – Selected Answer 1

Overruled. The foundation for the admission of the evidence has been properly laid down by a person with personal knowledge fo the subject matter at issue.

Question 17 – Selected Answer 2

Overruled, a declarant with personal knowledge of a photo, its contents, and the circumstances surrounding the photo may testify concerning it.

Question 17 – Selected Answer 3

The objection to the photograph should be overruled. The proper foundation has been layed to admit the photograph. Morgan has testified he is the owner of the gun and the horse and that the photgraph fairly and accurately depicts those items. The photograph is properly admitted.

**18. How should Judge rule? Explain your answer.**

Question 18 – Selected Answer 1

Overruled. The statement is admissible as a statement by a party opponent, as well as a statement made in the furtherance of a conspiracy.

Question 18 – Selected Answer 2

The Judge should admit the evidence as the words used: "Stick 'em up! This is a robbery!" are non-hearsay conduct and go toward the basis of the crime.

Question 18 – Selected Answer 3

The court should overrule the objection and allow the testimony. The statement from Billy is not hearsay. It is a statement of a party opponent, a statement against penal interest, and possibly an excited utterance. It is also an operative fact of the offense charged.

**19. How should Judge rule? Explain your answer.**

Question 19 – Selected Answer 1

Sustain the objection. It is strictly prohibited for the prosecutor comment on defendants right to remain silent. It is absolutely improper for the prosecutor to suggest that standing on his rights is evidence of guilt.

Question 19 – Selected Answer 2

The Judge should sustain Lawyer's objection as Prosecutor's comments were improper and violated Billy's constitutional right to not testify and not incriminate himself. The Court should instruct the jury that Prosecutor's comments were improper argument.

Question 19 – Selected Answer 3

The court should sustain the objection because the prosecutor's statement was improper argument. State should never mention D not testifying. Improper argument. Defense should ask that it be stricken from the record, for a jury instruction to disregard, and a mistrial. Persist in those objections until receiving an adverse ruling.

**20. How should Judge rule on Lawyer's motion? Explain your answer.**

Question 20 – Selected Answer 1

Grant the motion for mistrial. Jurors are not allowed to speak with parties to the trial until after trial is over with.

Question 20 – Selected Answer 2

The Judge should grant Lawyer's motion for a mistrial as jurors are only permitted to speak with other members of the jury. It is juror misconduct to speak to anyone about the case, particularly a former co-defendant.

Question 20 – Selected Answer 3

The court should grant the request for a mistrial. Parties to the action should not speak with the jurors or interact with them in any way. Discussion of the case should be between jurors during

deliberation alone. Deliberations are private. This exchange between Wyatt and jury was improper and not curable by any means other than a mistrial.