



TO: Judicial Section Leaders

DATE: October 24th, 2019

FROM: Texas YG State Office

RE: JUDICAL CASE QUESTIONS

Trial Questions/Comments

1. In Mike Sundance's affidavit, he mentions that dispatch informed him of an accident at Throckmorton and 9th, but he also states the accident occurred at Houston and 9th. Could you provide clarification on this and if it was intentional?
 - a. **Answer:** This is a typo, and on page 16 the first line should be "9th and Houston." This has been corrected and uploaded to the website.
2. What is the specific case number?
 - a. **Answer:** Each charge has its own case number. 2019 NT 0001 is alcohol charge and 2019 0002 is the accident charge.
3. Is the defendant supposed to contradict himself regarding drinking alcohol? And if so, is it a purposeful part of the case problem? For example, on page 28, paragraph 3, Torrance Rush says, "Also, I wasn't on my phone and I don't drink alcohol." But then on page 30, paragraph 1, he says, "I really just had one or two drinks that night." In the second statement, is he referring to alcoholic drinks? And if so, is the contradiction on purpose as part of the case problem?
 - a. **Answer:** No changes.
4. Must an attorney reserve remaining time after direct/cross examination, or be barred from re-direct/re-cross? Where is the rule that judges are using to mandate reservation of remaining time, as seen in past years?
 - a. **Answer:** There is no rule regarding the reservation of time for second rounds of examination and the prosecution's rebuttal. Some districts have evolved "local rules" that include this procedure of "reserving time." However, in the interest of statewide uniformity, this extra rule was not adopted into the Rules of Procedure and should not be required by judges.
5. Is constructive sequestration of witnesses allowed? In the Rules of Procedures, page 6, in regards to Witnesses, it says, "#8 Witnesses are not to be excluded during the mock trial. No team may invoke the rule of sequestration." Does this bar only actual sequestration? Does this rule also bar constructive sequestration?
 - a. **Answer:** The Rule of Evidence 614 controls for this issue. If invoked "the Rule" is done so constructively. Witnesses are to stay in the room. The Rule prevents the witness from testifying as if they heard the prior in court testimony of another witness who was called previously in that particular round.
6. Should the timestamps on the tweets be a.m. or p.m.?
 - a. **Answer:** The second tweet's time stamped need to be corrected to PM. That correction has been made and is uploaded on the website.

7. On page 52, is test 06 supposed to be labeled as Subject Texas 02 or is this an error?
 - a. **Answer:** This should say “Subject Test 2” and the case has been updated to reflect that.
8. Should the defense choose not to call Torrance, would the prosecution be able to use the tweets at all since no other witness has personal knowledge of the tweets? They are self-authenticating, but no one else has mentioned anything about them and they were pulled by the prosecutor.
 - a. **Answer:** See Rule of Evidence 902(10). If a record qualifies under this rule, the record requires no other extrinsic evidence of authenticity in order to be admitted.
9. Did Torrance change his clothes from his night out partying? Or was he wearing the same clothing to pick up his friend when he got into the accident?
 - a. **Answer:** The case packet does not contain this information. To have a witness assume the fact would be an unreasonable inference. Witnesses should not add facts that are not contained in the case packet. Especially where the created information materially affects a crucial element of the case.
10. Did Torrance consume alcohol at the party when he had 1 or 2 drinks?
 - a. **Answer:** It is not a reasonable inference to say the drinks did not contain alcohol. In the context of the whole paragraph on page 30 it is clear Torrance’s statements indicate that he consumed alcohol at the party.
11. What time did Torrance arrive home from the party?
 - a. **Answer:** The case packet does not contain this information. To have a witness assume the fact would be an unreasonable inference. Witnesses should not add facts that are not contained in the case packet. Especially where the created information materially affects a crucial element of the case.
12. What time did Robin Rush consume the alcohol in Torrance’s vehicle?
 - a. **Answer:** The case packet does not contain this information. To have a witness assume the fact would be an unreasonable inference. Witnesses should not add facts that are not contained in the case packet. Especially where the created information materially affects a crucial element of the case.
13. Was Torrance aware of the open container when he began driving the vehicle?
 - a. **Answer:** The case packet does not contain this information. To have a witness assume the fact would be an unreasonable inference. Witnesses should not add facts that are not contained in the case packet. Especially where the created information materially affects a crucial element of the case.
14. Satoshi Umbreon is listed as a witness for the Prosecution and Sawyer Steel as a witness for the Defense, is that a mistake?
 - a. **Answer:** No mistake. Satoshi says that the victim was a pedestrian walking across the crosswalk. This is the prosecution’s argument. Steele says that the victim was riding a bike and came up from behind the defendant’s vehicle when he should have followed behind the car instead. The order Steele saw the events is a little confusing, but he does say the whole thing happened within milliseconds. This is a defense argument.
15. Can Torrance be asked about the breathalyzer test since it is NOT in his affidavit?

- a. **Answer:** This is a difficult issue because clearly Torrance was in jail. We just don't have his story about these events. In real life, the witness who experienced the event would be able to testify from their personal knowledge about the event. This is the challenge of mock trial. From his affidavit, Torrance has no additional facts to add regarding the testing. As such, his direct examination should not go into this area unless his testimony is based on in-court statements from other witnesses up to that point in trial. As the defendant, even if Rule 614 is invoked he would not be "constructively excluded" from the courtroom. If this technique is used the witness still should not make up facts. It is proper for the witness to say "I don't recall making that statement." For cross examination, ideally, the witness would handle this issue without a "lack of personal knowledge" objection because the witness would know something about their trip to jail. An attorney conducting cross examination should stay away from topics they know are not contained with the case packet information for that witness. Otherwise, the attorney might be inviting the witness to violate the rules on reasonable inference. A Judge has discretion to conduct a bench conference to resolve any issues regarding information "outside of the scope of the case materials."
16. Can the photographs be admitted into evidence in a batch or do they need to be admitted individually?
- a. **Answer:** An attorney may decide the most ideal way of offering evidence. There are no rules prohibiting offering more than one exhibit at a time for admission into evidence. Each separate exhibit should comply with Rules 901 or 902. But the typical questions asked to "lay a foundation" may be asked regarding multiple exhibits at once. For example, "Do you recognize what has been marked as State's Exhibit 1-5?" For identification purposes they should be labeled as individual exhibits. "Your honor, the State offers State's Exhibit 1-5." Objections should be specific to the exhibit unless it applies to all of the offered exhibits. "Objection, State's Exhibit 2 has been altered."
17. Are the affidavits hearsay? If so, are all references to what a witness said in their affidavit hearsay?
- a. **Answer:** The affidavits are not considered "pre-entered." They are not evidence unless offered by an attorney and admitted by a Judge. For most YAG trials, attorneys do not offer exhibits. Sometime, they will use them for impeachment purposes. However, if offered and objected to under hearsay, the offering attorney would be required to show why they are not hearsay or fall within an exception. There would also be Rule 805 concerns as well.
18. If the affidavit is hearsay, how is the officer's testimony about what people told him in his investigation admissible unless the witness is there to testify or physical evidence is available to offer?
- a. **Answer:** If the opposing attorney believes a statement is hearsay they can choose to object to the testimony. The offering attorney should be prepared with a response as to why the testimony is not hearsay or that it falls within an exception.
19. Does the officer need a search warrant to search the car and remove the red cup?



- a. **Answer:** Attorneys in the trial court should not be making Fourth Amendment arguments. But, no, the search was proper.
20. On cross examination, is counsel required to show the witness the evidence they are question about, for example, the tweets?
 - a. **Answer:** Not generally. Rules 106, 107, and 613(b)(2) speaks to this issue, but I do not believe this question is solely asking about those rules. Torrance should be familiar with their tweets and ready to discuss them on cross examination. A witness who claims to “not recall” the tweets will be considered not prepared for the competition. Also, witnesses should not intentionally waste the opposing counsel’s time by needing to review the tweets.

Appellate Questions/Comments

1. Shouldn't the appellant be Torrance Rush?
 - a. **Answer:** That is correct and this edit has been made and uploaded to the website.