

Criminal Law Update & Review: Self Test

I. Jurors

1. When jurors over 65 appear in court and ask to be excused from jury service, Judge A has a policy of granting all such requests. Is the judge's policy proper? Why or why not?

2. During a break, juror number 5 informs Judge A that he inadvertently saw defendant in the deputy's custody. Judge A immediately inquires & learns juror 5 did not talk to the other jurors. Then, outside presence of the jury, the judge informs defendant, his counsel & the prosecutor. Defendant asks the judge to question the other jurors. The judge complies and learns that none of them saw the defendant or spoke with juror 5 about his observations. The judge denies defendant's motion for a mistrial but sua sponte substitutes an alternate for juror 5. Did the judge do anything wrong? If so, what?

II. Evidence Issues in Child Sex Cases

1. A child is taken to a hospital pediatric ward for nurse's interview the night of the alleged abuse. A nurse, in uniform with a badge, explains to the child that she will be examined by a doctor. The nurse asks the child if she understands the difference between a lie and the truth. When the child indicates that she does, the nurse instructs the child to tell the truth. The child then makes statements to the nurse, which the state seeks to offer through the nurse under the 803(4) hearsay exception (for purposes of medical diagnosis and treatment). What standard do you apply to determine if the child's hearsay statements are admissible under 803(4)? What facts are relevant to your decision?

2. After each hypothetical, indicate whether the expert's opinion is admissible.

a. A pediatrician examines a child. There is no physical evidence of sexual abuse but the child tells Dr. she was abused by defendant. Relying on the child's statements, the Dr. diagnoses the child as abused. The state offers the Dr.'s opinion that the child was abused at trial.

b. Same facts but now the child shows signs of trauma (compressed speech, hand-wringing, anxiety). Relying on the child's statements & these signs of trauma, the Dr.'s forms an opinion that the child was abused. The state offers the Dr.'s opinion at trial.

c. A psychologist interviews a child victim. The state offers the psychologist's testimony that the child appeared to be truthful and the child's story was believable.

d. Same facts but now the state offers the psychologist's testimony that generally children do not lie about abuse.

III. U.S. Supreme Court's Latest Sixth Amendment Cases

1. Defendant is before you for a trial de novo on a misdemeanor. Defendant has no counsel and you don't get a waiver. Defendant is found guilty and you sentence defendant with a fine and a suspended sentence. Have you erred? Why or why not?

2. Defendant files a motion for appropriate relief asserting a violation of the right to effective assistance of counsel. Specifically, defendant argues that at trial, his counsel was late to court and the judge began jury selection in his absence. Counsel appeared midway through jury selection. What standard do you use to judge this ineffectiveness claim?

3. Same facts but now defendant argues that counsel was ineffective because he labored under a conflict of interest. Specifically, defendant argues that (1) counsel represented both him and a co-defendant and (2) counsel didn't put on a witness that would have exonerated him because that witness would have hurt his co-defendant's defense. What standard do you use to judge this ineffectiveness claim?