5)

At each of the six indicated points above, what appropriate objections, if any, and motions, if any, should have been made, and how should the court have ruled on each objection or motion?

California Prop 8

California's Prop 8 is the Victim's Bill of Rights and states that all relevant evidence will be admissible subject to: 1) privileges, 2) the exclusionary rule, 3) rape shield laws, 4) hearsay exceptions and exemptions, and 5) the prosecutor opening the door to certain evidence before the defendant has had the chance to open the door.

Here, Prop 8 is applicable because Dan is being charged with the second-degree murder of Vic and this is considered a criminal case.

Thus, Prop 8 is applicable.

1. Yes, I did. I asked him, "Who shot you?"

Relevance

All evidence must be logically and legally relevant to be admissible.

Logical Relevance

In CA, evidence is logically relevant if it tends to prove a matter than without it.

Here, the evidence is logically relevant because Officer Anne's statement goes to a disputed fact of whether Vick was shot and killed at 11:00pm on Super Bowl Sunday at the bar or on the way to the hospital. If Officer Anne was able to speak with Vick it indicates that was Vick was still alive at the bar.

Thus, the evidence is logically relevant.

Legal Relevance - CA 352 Balancing

In CA, the 352 balancing test is used to admit evidence and the probative value of evidence must be substantially outweighed by the danger of unfair prejudice.

Here, the evidence's probative value is substantially outweighed by the danger of unfair prejudice because it indicates whether or not Dan killed Vick.

Thus, the evidence is legally relevant.

Witness Competence

In CA, all witnesses are presumed to be competent.

Here, Officer Anne is presumed to be competent.

Thus, Officer Anne is competent.

Personal Knowledge

All non-expert witnesses must testify to matters that they only have personal knowledge in.

Here, Officer Anne has personal knowledge to testify to the matter because she was the responding officer to the scene.

Thus, Officer Anne has personal knowledge.

Hearsay

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Hearsay statements are only admissible if there is an exemption or exception.

Here, officer's Anne's response to the prosecutor's question is hearsay because it is Officer's Anne's own question to Vick that she stated at the bar which was out of court.

Thus, Anne's statement is hearsay.

Non-Hearsay Statement

A non-hearsay statement is an exception and may come in to show a prior inconsistent statement, state of mind, or the effect on the listener.

Here, the prosecutor will argue that Anne's question should come in as a state of mind exception because she asked the statement to Vick to ask what his current state of mind is. But this argument will likely not stand because it does not have to do with Vick's state of mind.

Dying Declaration

Under CA, a dying declaration is permitted in civil and criminal cases and may come in as a hearsay exception if the defendant is under an understanding of impending death and it relates to who is liable for the cause of death.

Here, the statement will come in as a dying declaration because it relates to who caused Vick's death and he was under an understanding of impending death as he was lying on the ground bleeding from at least one bullet wound.

Thus, the statement will come in under this exception.

Facts Not in Evidence

An objection to a hearsay statement is if it asks for facts not in evidence.

Here, the statement is asking for facts not in evidence because it relates to facts indicating who the defendant that caused Vick's injury might be.

Thus, this is the objection that should have been made.

6th Amendment

Under the 6th Amendment of the US Constitution, applicable to the states via the 14th, every accused has the right to confront witnesses.

Here, a 6th amendment violation motion should have been made because it relates to questions asked to of Vick.

Thus, it is a 6th amendment violation.

2. What did Vick say to you in response?

Relevance

See rule above.

Logical Relevance

See rule above and analysis above.

Legal Relevance - CA 352 Balancing

See rule above and analysis above.

Leading Question

A leading question is permitted on cross examination or if the witness is hostile or of young age.

Here, the objection of a leading question should have been made because the prosecutor is asking a leading question with the intent that Officer Anne responds that Vick stated that it was Dan who shot him. Furthermore, the question was asked on direct.

Thus, this objection should have been made.

6th Amendment

See rule and analysis above.

3. During that conversation, what did Dan tell you?

Relevance

See rule above.

Logical Relevance

See rule above.

Here, this information is logically relevant because it relates to a conversation that can possibly lead to an alibi or lack thereof for Dan.

Thus, the evidence is logically relevant.

Legal Relevance - CA 352 Balancing

See rule above.

Here, the evidence is legally relevant because the danger of unfair prejudice is not substantially outweighed by the probative value.

Thus, the evidence is legally relevant .

Marital Communication Privilege

Under CA, the marital communication privilege is relating to conversations between a married or engaged couple that are meant to be kept private. Both spouses hold this privilege and may assert it on one another's behalf.

Here, the defense should assert that Greta may not be called as a witness because it relates to the marital communication privilege. However, this privilege is not applicable here because they simply dated and are not married.

Thus, this privilege is not relevant here.

4. Have you heard Dan was arrested for assault with intent to kill in 1997?

Relevance

See rule above.

Logical Relevance

See rule and analysis above.

Legal Relevance - CA 352 Balancing

See rule and analysis above.

Character Evidence

Character evidence may not be used to show that the defendant acted in conformity with that act on a specific occasion. Defendant may open the door to their good character.

Here, Dan did not open the character to his good character so this may not come in.

Thus. statement may not come in.

Prior Bad Acts

A prior bad act may come in if it is a felony for dishonesty or or it has been over 10 years.

Here, this statement may not come in because it occurred in 1997 and it is too probative.

5. No, I had not heard that, but that would not change my opinion of Dan's peaceful nature?

Relevance

See rule above.

Logical Relevance

See rule above.

Legal Relevance - CA 352 Balancing

See rule above.

Character Evidence

Character evidence may not be used to show that the defendant acted in conformity with that act on a specific occasion. Defendant may open the door to their good character.

Here, Dan did not open the character to his good character so this may not come in.

Thus. the statement may not come in.

Prior Bad Acts

A prior bad act may come in if it is a felony for dishonesty or or it has been over 10 years.

Here, this statement may not come in because it occurred in 1997 and it is too probative.

6. The prosecutor next moved to introduce into evidence a certified cope of the 1997 arrest report.

Relevance

See rule above.

Logical Relevance

See rule above and analysis above.

Legal Relevance - CA 352 Balancing

See rule and analysis above.

Impeachment

A testifying witness may be impeached with specific instances of conduct if it relates to them.

Here, the certified copy of the 1997 arrest report may not come in as impeachment evidence because it relates to a specific instance of conduct and was already denied by the testifying witness.

Thus, the report may not come in.

END OF EXAM