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2012 Edition

by Lang Baker

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Baker's Texas Drugs & DWI Handbook

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Organization of Case Notes

In this description of case note organization, references are to the Controlled Substances Act unless otherwise noted.

Case notes on general topics such as chain of custody, laboratory reports, accomplice witnesses, and jeopardy are grouped under Sec. 481.001 of the Controlled Substances Act. Additional notes on corroboration under Art. 38.141, Code of Criminal Procedure, are with the text of that provision.

Case notes on entrapment follow the statutory text of Section 8.06, Penal Code.

Case notes on forfeiture follow the text of Chapter 59, Code of Criminal Procedure, while statutory texts relating to that subject will also be found at 481.151 et seq. (Subchapter E) of the Controlled Substances Act, and Section 159.205 of the Tax Code.

All case notes relating to possession are grouped under Sec. 481.002(38), regardless of whether the offense was for possession of a controlled substance under Secs. 481.115-481.118, possession of marihuana under Sec. 481.121, or possession of paraphernalia under Sec. 481.125.

All case notes relating to delivery are grouped under Sec. 481.002(9) regardless of whether the offense is delivery of

a controlled substance under Secs. 481.112-481.114 or delivery of marihuana under Sec. 481.120.

All case notes relating to specific drugs are grouped under Sec. 481.105 regardless of whether the offense was possession under Secs. 481.115-481.118, delivery under Secs. 481.112-481.114, or obtaining by fraud under Sec. 481.129.

An alphabetical listing of controlled substances, with citation to penalty group and section numbers in which each appears, begins on the next page.

All case notes relating specifically to marihuana are grouped under Sec. 481.002(26) regardless of whether the offense is delivery or possession.

Case notes relating to aspects of a prosecution under offense sections other than the element of possession or delivery or the specific substance appear under the specific sections defining those offenses.

Case notes peculiar to dangerous drugs cases are listed under that statute, while case notes from prosecutions under that act of a more general rule, such as proof of possession, are included with cases under the Controlled Substances Act.

CITATION FORM

v S = v State

Ep = Ex Parte

: = S.W.2d or 3rd Texas Supreme Court

/ = S.W.2d or 3rd Court of Criminal Appeals

<#> = S.W.2d or 3rd Court of Appeals

vol. no. 338 or less = S.W.3d

COURTS OF APPEALS

<1> Houston
<2> Fort Worth
<3> Austin
<4> San Antonio
<5> Dallas
<6> Texarkana
<7> Amarillo
<8> El Paso
<9> Beaumont
<10> Waco
<11> Eastland
<12> Tyler
<13> Corpus Christi
<14> Houston

ABBREVIATIONS

* indictment or charge
set out in opinion
c/w(s) complaining witness(es)
CCA Code Construction Act
CCP Code of Criminal Proc.
Ch Chapter
circ circumstantial
co-def co-defendant
conv conviction
CS Civil Statutes
def defendant
DWI driving while intoxicated
evid evidence
fund fundamental(ly)
insuff insufficient(cy)
p/o(s) peace officer(s)
poss possession
pros prosecution
rev prob revocation of probation
suff sufficient(cy)
TDC Dept. of Corrections
w/o without

Special Note on 2011 Legislative Amendments:

The statutory text presented in the 2012 editions of Baker's Texas Handbooks includes text from both before and after amendments by the Regular and 1st Called Sessions of the Texas Legislature in 2011, except that only the post-amendment versions of non-substantive amendments (by Senate Bill 1303) are presented.

ALPHABETICAL LIST OF CONTROLLED SUBSTANCES
with Penalty Group and Sections

Penalty Group	Section	Name of Substance
1	481.102 (2)	Acetorphine
1	481.102 (4)	Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide)
1	481.102 (2)	Acetyldihydrocodeine
2	481.103 (a) (3)	AL-464
2	481.103 (a) (3)	AL-422
2	481.103 (a) (3)	AL-463
1	481.102 (1)	Alfentanil
1	481.102 (1)	Allylprodine
2	481.103 (a) (3)	alpha-aminopropiophenone
1	481.102 (1)	Alphacetylmethadol
3	481.104 (a) (8)	(Alpha- (+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)
2	481.103 (1)	alpha-ethyltryptamine
3	481.104 (a) (9)	17 alpha-methyl-3 alpha
3	481.104 (a) (9)	17 alpha-methyl-3 beta
3	481.104 (a) (9)	17 alpha-methyl-4-hydroxynandrolone
2	481.103 (a) (3)	alpha-(methylamino)propriophenone
3	481.104 (a) (9)	17 alpha-methyl-delta-1-dihydrotestosterone
1	481.102 (4)	alpha-methylfentanyl
1	481.102 (4)	Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide)
2	481.103 (a) (1)	alpha-methyltryptamine
2	481.103 (a) (3)	alpha-N-methylaminopropiophenone
1	481.102 (4)	Alphaprodine
2	481.103 (a) (4)	alpha-PVP
2	481.103 (a) (4)	alpha-Pyrrolidinopentiophenone
3	481.104 (a) (2)	Alprazolam
2-A	481.1031	certain AM- derivatives of certain compounds
2	481.103 (a) (3)	2-amino-5-phenyl-2-oxazoline
2	481.103 (a) (3)	2-amino-1-phenyl-1-propanone
2	481.103 (a) (4)	2-aminopropanal
2	481.103 (a) (3)	2-aminopropiophenone
2	481.103 (a) (3)	Aminorex
2	481.103 (a) (3)	aminoxaphen
3	481.104 (a) (2)	Amobarbital
3	481.104 (a) (2)	amobarbital
2	481.103 (a) (3)	Amphetamine
3	481.104 (a) (9)	anabolic steroids
3	481.104 (a) (9)	Androstenediol
3	481.104 (a) (9)	Androstenedione
3	481.104 (a) (9)	Androstenediol
3	481.104 (a) (9)	Androstenedione
1	481.102 (4)	Anileridine
3	481.104 (a) (5)	Barbital
3	481.104 (a) (2)	barbituric acid
1	481.102 (1)	Benzethidine
3	481.104 (a) (7)	Benzphetamine
1	481.102 (2)	Benzylmorphine
2	481.103 (a) (1)	1-benzylpiperazine
2	481.103 (a) (1)	N-benzylpiperazine
2	481.103 (a) (2)	Benzymethyl ketone
3	481.104 (a) (9)	17 beta-dihydroxy-5 alpha-androstane
3	481.104 (a) (9)	17 beta-dihydroxy-5 alpha-androstane
3	481.104 (a) (9)	17 beta-dihydroxyandrost-4-ene
3	481.104 (a) (9)	13 beta-ethyl-17 beta-hydroxygon-4-en-3-one
1	481.102 (4)	Beta-hydroxy-3-methylfentanyl

1	481.102 (4)	Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide)
1	481.102 (1)	Betaprodine
1	481.102 (4)	Bezitramide
3	481.104 (a) (9)	Bolasterone
3	481.104 (a) (9)	Boldenone
3	481.104 (a) (2)	Bromazepam
2	481.103 (a) (1)	4-bromo-2,5-dimethoxy-alpha-methylphenethylamine
2	481.103 (a) (1)	4-bromo-2,5-dimethoxyamphetamine
2	481.103 (1)	4-bromo-2,5-dimethoxyphenethylamine
2	481.103 (a) (1)	4-bromo-2,5-DMA
2	481.103 (a) (1)	Bufotenine
4	481.105 (2)	Buprenorphine, or its salts
4	481.105 (2)	Butorphanol, or its salts
2	481.103 (a) (4)	Butylone
2	481.103 (a) (1)	BZP
3	481.104 (a) (9)	Calusterone
3	481.104 (a) (2)	Camazepam
2-A	481.1031	certain cannabinoid receptor agonists
2-A	481.1031	certain cannabinol derivatives, except where contained in marijuana
1	481.102 (4)	Carfentanil
3	481.104 (a) (7)	Cathine[(+)-norpseudoephedrine]
2	481.103 (a) (3)	Cathinone
3	481.104 (a) (5)	Chloral betaine
3	481.104 (a) (5)	Chloral hydrate
3	481.104 (a) (2)	Chlorhexadol
3	481.104 (a) (2)	Chlorodiazepoxide
3	481.104 (a) (7)	Chlorphentermine
3	481.104 (a) (9)	4-chlortestosterone
3	481.104 (a) (2)	Clobazam
3	481.104 (a) (2)	Clonazepam
1	481.102 (1)	Clonitazene
3	481.104 (a) (2)	Clorazepate
3	481.104 (a) (7)	Clortermine
3	481.104 (a) (9)	Clostebol
3	481.104 (a) (2)	Clotiazepam
3	481.104 (a) (2)	Cloxazolam
1	481.102 (3) (D)	coca leaves
1	481.102 (3) (D)	Cocaine
1	481.102 (3) (A)	Codeine
3	481.104 (a) (4)	codeine
4	481.105 (1)	codeine
1	481.102 (2)	Codeine methylbromide
1	481.102 (2)	Codeine-N-Oxide
2-A	481.1031	certain CP- derivatives of certain compounds
2	481.103 (a) (1)	cyclohexamine
2-A	481.1031	certain cyclohexylphenols (including certain CP- and JWH- derivatives)
1	481.102 (2)	Cyprenorphine
3	481.104 (a) (9)	Dehydrochlormethyltestosterone
3	481.104 (a) (2)	Delorazepam
2	481.103 (a) (1)	delta-1 cis or trans tetrahydrocannabinol
3	481.104 (a) (9)	Delta-1-dihydrotestosterone
2	481.103 (a) (1)	delta-3,4 cis or trans tetrahydrocannabinol
2	481.103 (a) (1)	delta-6 cis or trans tetrahydrocannabinol
2	481.103 (a) (1)	(-)-delta-9-(trans)-tetrahydrocannabinol)
1	481.102 (2)	Desomorphine
2	481.103 (a) (1)	DET
3	481.104 (a) (8)	Dextropropoxyphene
1	481.102 (1)	Diampromide
3	481.104 (a) (2)	Diazepam
3	481.104 (a) (7)	Diethylpropion
1	481.102 (1)	Diethylthiambutene
2	481.103 (a) (1)	Diethyltryptamine
2	481.103 (a) (1)	N,N-Diethyltryptamine
1	481.102 (1)	Difenoxin

3	481.104 (a) (4)	difenoxin
4	481.105 (1)	difenoxin
1	481.102 (4)	Dihydrocodeine
3	481.104 (a) (4)	dihydrocodeine
4	481.105 (1)	dihydrocodeine
3	481.104 (a) (4)	dihydrocodeinone
1	401.102 (3) (A)	Dihydroetorphine
1	481.102 (2)	Dihydromorphine
2	481.103 (a) (3)	4,5-dihydro-5-phenyl-2-oxazolamine
3	481.104 (a) (9)	Dihydrotestosterone
3	481.104 (a) (9)	4-dihydrotestosterone
1	481.102 (1)	Dimenoxadol
2	481.103 (a) (1)	2,5-dimethoxy-alpha-methylphenethylamine
2	481.103 (a) (1)	2,5-dimethoxyamphetamine
2	481.103 (a) (1)	2,5-dimethoxy-4-ethylamphetamine
2	481.103 (a) (1)	2,5-dimethoxy-4-(n)-propylthiophenethylamine
2	481.103 (a) (1)	3-(beta-Dimethylaminoethyl)-5-hydroxyindole
2	481.103 (a) (1)	3-(2-dimethylaminoethyl)-5-indolol
2	481.103 (a) (1)	N,N-dimethylamphetamine
2	481.103 (a) (4)	3,4-Dimethylmethcathinone
2	481.103 (a) (1)	N,N-dimethylserotonin
1	481.102 (1)	Dimethylthiambutene
2	481.103 (a) (1)	Dimethyltryptamine
1	481.102 (1)	Dioxaphetyl butyrate
1	481.102 (4)	Diphenoxylate
4	481.105 (1)	diphenoxylate
1	481.102 (1)	Dipipanone
2	481.103 (a) (1)	2,5-DMA
2	481.103 (a) (4)	3,4-DMMC
2	481.103 (a) (1)	DMT
2	481.103 (1)	DOET
2	481.103 (a) (1)	DOM
2	481.103 (a) (1)	Dronabinol (synthetic)
3	481.104 (a) (9)	Drostanolone
1	481.102 (2)	Drotebanol
1	481.102 (3) (D)	ecgonine
2	481.103 (a) (3)	ephedrone
3	481.104 (a) (2)	Estazolam
3	481.104 (a) (5)	Ethchlorvynol
3	481.104 (a) (5)	Ethinamate
3	481.104 (a) (2)	Ethyl loflazepate
2	481.103 (a) (1)	N-ethyl MDA
2	481.103 (a) (1)	N-ethyl-1-phenylcyclohexylamine
2	481.103 (a) (1)	N-ethyl-3-piperidyl benzilate
2	481.103 (a) (1)	7-Ethyl-6,6,beta,7,8,9,10,12,13,-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole
2	481.103 (a) (1)	Ethylamine Analog of Phencyclidine
3	481.104 (a) (2)	2-(ethylamino)-2-(2-thienyl)-cyclohexanone
2	481.103 (a) (3)	N-Ethylamphetamine
2	481.103 (a) (4)	beta-Keto-Ethylbenzodioxolylbutanamine
3	481.104 (a) (9)	Ethylestrenol
1	481.102 (1)	Ethylmethylthiambutene
1	481.102 (3) (A)	Ethylmorphine
3	481.104 (a) (4)	ethylmorphine
4	481.105 (1)	ethylmorphine
2	481.103 (a) (4)	Ethylone
1	481.102 (1)	Etonitazene
1	481.102 (2)	Etorphine
2	481.103 (a) (3)	Etorphine Hydrochloride
1	481.102 (1)	Etoxidine
3	481.104 (a) (7)	Fencamfamin
2	481.103 (a) (3)	Fenethylamine
3	481.104 (a) (7)	Fenfluramine
3	481.104 (a) (7)	Fenproporex
1	481.102 (4)	Fentanyl
2	481.103 (a) (4)	Flephedrone

3	481.104 (a) (2)	4-(2-fluorophenyl)-6, 8-dihydro-1,3,8,- trimethylpyrazolo-[3,4-e] (1,4)-d diazepin-7 (1H)-one
3	481.104 (a) (2)	Fludiazepam
1	481.102 (5)	Flunitrazepam
2	481.103 (a) (4)	3-Fluoromethcathinone
2	481.103 (a) (4)	4-Fluoromethcathinone
3	481.104 (a) (9)	Fluoxymesterone
3	481.104 (a) (2)	flupyrazapon)
3	481.104 (a) (2)	Flurazepam
2	481.103 (a) (4)	3-FMC
3	481.104 (a) (9)	Formebulone
3	481.104 (a) (9)	Furazabol
1	481.102 (1)	Furethidine
1	481.102 (9)	Gamma hydroxybutyrate, including its salts
1	481.102 (9)	GHB, including its salts
3	481.104 (a) (2)	Glutethimide
1	481.102 (3) (A)	Granulated opium
3	481.104 (a) (2)	Halazepam
3	481.104 (a) (2)	Haloxzolam
1	481.102 (2)	Heroin
2	481.103 (a) (1)	3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9- trimethyl-6H-dibenzo[b,d]pyran
2-A	481.1031	certain HU- derivatives of certain compounds
3	481.104 (a) (9)	human growth hormone
1	481.102 (3) (A)	Hydrocodone
3	481.104 (a) (4)	hydrocodone
1	481.102 (2)	Hydromorphinol
1	481.102 (3) (A)	Hydromorphone
2	481.103 (a) (1)	N-hydroxy MDA
2	481.103 (a) (1)	N-hydroxy-3,4-methylenedioxyamphetamine
2	481.103 (a) (1)	5-hydroxy-N,N-dimethyltryptamine
3	481.104 (a) (9)	4-hydroxy-19-nortestosterone
1	481.102 (9)	Hydroxybutyric acid, including its salts
1	481.102 (1)	Hydroxypethidine
3	481.104 (a) (9)	4-hydroxytestosterone
2	481.103 (a) (1)	Ibogaine
1	481.102 (4)	Isomethadone
2-A	481.1031	certain JWH- derivatives of certain compounds
1	481.102 (10)	Ketamine
3	481.104 (a) (2)	Ketazolam
1	481.102 (1)	Ketobemidone
1	481.102 (4)	Levomethorphan
1	481.102 (1)	Levophenacylmorphan
1	481.102 (4)	Levorphanol
2	481.103 (a) (3)	Lisdexamfetamine, including its salts, isomers, and salts of isomers
3	481.104 (a) (2)	Loprazolam
3	481.104 (a) (2)	Lorazepam
3	481.104 (a) (2)	Lormetazepam
3	481.104 (a) (2)	Lysergic acid
3	481.104 (a) (2)	Lysergic acid amide
1	481.102 (5)	Lysergic acid diethylamide
1-A	481.1021	Lysergic acid diethylamide (LSD), including its salts, isomers, and salts of isomers
2	481.103 (a) (1)	mappine
	481.120 et seq.	Marihuana
3	481.104 (a) (7)	Mazindol
2	481.103 (a) (1)	MDM
2	481.103 (a) (1)	MDMA
2	481.103 (a) (4)	MDPV
3	481.104 (a) (2)	Mebutamate
2	481.103 (a) (3)	Mecloqualone
3	481.104 (a) (2)	Medazepam
3	481.104 (a) (7)	Mefenorex
1	481.102 (4)	Meperidine

2	481.103 (a) (4)	Mephedrone
3	481.104 (a) (5)	Mephobarbital
3	481.104 (a) (5)	Meprobamate
1	481.102 (1)	Meprodine
2	481.103 (a) (1)	Mescaline
3	481.104 (a) (9)	Mestanolone
3	481.104 (a) (9)	Mesterolone
1	481.102 (4)	Metazocine
1	481.102 (1)	Methadol
1	481.102 (4)	Methadone
1	481.102 (4)	Methadone-Intermediate, 4-cyano-2- dimethylamino-4,4-diphenyl butane
1	481.102 (6)	Methamphetamine
3	481.104 (a) (9)	Methandienone
3	481.104 (a) (9)	Methandriol
2	481.103 (a) (3)	Methaqualone
2	481.103 (a) (3)	Methcathinone
3	481.104 (a) (9)	Methenolone
3	481.104 (a) (5)	Methohexital
2	481.103 (a) (1)	5-methoxy-3,4-methylenedioxy amphetamine
2	481.103 (a) (1)	4-methoxy-alpha-methylphenethylamine
2	481.103 (a) (1)	4-methoxyamphetamine
2	481.103 (a) (1)	5-methoxy-N, N-diisopropyltryptamine;
2	481.103 (a) (3)	2- (methylamino) -1-phenylpropan-1-one
2	481.103 (a) (3)	2-methylamino-propiofenone
2	481.103 (a) (2)	methyl benzyl ketone
2	481.103 (a) (3)	methylcathinone
2	481.103 (a) (3)	N-methylcathinone
3	481.104 (a) (9)	Methyldienolone
2	481.103 (a) (1)	4-methyl-2,5-dimethoxy-alpha-methylphenethylamine
2	481.103 (a) (1)	4-methyl-2,5-dimethoxyamphetamine
2	481.103 (a) (1)	N-methyl-3-piperidyl benzilate
2	481.103 (a) (1)	1-methyl-4-phenyl-4-propionoxypiperidine
1	481.102 (7)	methylamine
2	481.103 (a) (1)	4-methylaminorex
2	481.103 (a) (4)	beta-Keto-N-methylbenzodioxolylpentanamine
2	481.103 (a) (4)	beta-Keto-N-methylbenzodioxolylpropylamine
1	481.102 (2)	Methyl-desorphine
1	481.102 (2)	Methyldihydromorphine
2	481.103 (a) (1)	3,4-methylenedioxy amphetamine
2	481.103 (a) (1)	3,4-methylenedioxy methamphetamine
2	481.103 (a) (1)	3,4-methylenedioxy N-ethylamphetamine
2	481.103 (a) (4)	3,4-methylenedioxy-N-ethylcathinone
2	481.103 (a) (4)	3,4-Methylenedioxy-N-methylcathinone
2	481.103 (a) (4)	3,4-Methylenedioxypropylvalerone
1	481.102 (4)	3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)- 4-piperidyl]-N-phenylpropanamide)
2	481.103 (a) (4)	4-Methylmethcathinone
2	481.103 (a) (4)	Methylone
3	481.104 (a) (1)	Methylphenidate
3	481.104 (a) (5)	Methylphenobarbital
3	481.104 (a) (9)	Methyltestosterone
1	481.102 (4)	3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide)
3	481.104 (a) (9)	Methyltrienolone
3	481.104 (a) (2)	Methyprylon
1	481.102 (3) (A)	Metopon
3	481.104 (a) (9)	Mibolerone
3	481.104 (a) (2)	Midazolam
3	481.104 (a) (7)	Modafinil
1	481.102 (2)	Monoacetylmorphine
2	481.103 (a) (3)	monomethylpropion
1	481.102 (1)	Moramide
1	481.102 (4)	Moramide-Intermediate, 2-methyl-3-morpholino- 1,1-diphenyl-propane-carboxylic acid
1	481.102 (1)	Morpheridine
1	481.102 (3) (A)	Morphine

3	481.104 (a) (4)	morphine
1	481.102 (2)	Morphine methylbromide
1	481.102 (2)	Morphine methylsulfonate
1	481.102 (2)	Morphine-N-Oxide
2	481.103 (a) (1)	MPPP
1	481.102 (2)	Myrophine
2	481.103 (a) (1)	Nabilone
2-A	481.1031	Nabilone
3	481.104 (a) (3)	Nalorphine
3	481.104 (a) (9)	Nandrolone
2-A	481.1031	certain naphthoylindoles (including AM-2201, and certain JWH- derivatives)
2-A	481.1031	certain naphthoylpyrroles (including certain JWH- derivatives)
2-A	481.1031	certain naphthylmethylindenes (including certain JWH- derivatives)
2-A	481.1031	certain naphthylmethylinones (including certain JWH- derivatives)
2	481.103 (a) (4)	Naphthylpyrovalerone
2	481.103 (a) (4)	Naphyrone
1	481.102 (2)	Nicocodeine
1	481.102 (2)	Nicomorphine
3	481.104 (a) (2)	Nimetazepam
3	481.104 (a) (2)	Nitrazepam
1	481.102 (1)	Noracymethadol
3	481.104 (a) (9)	Norandrostenediol
3	481.104 (a) (9)	Norandrostenedione
3	481.104 (a) (9)	Norbolethone
3	481.104 (a) (9)	Norclostebol
3	481.104 (a) (2)	Nordiazepam
3	481.104 (a) (9)	Norethandrolone
1	481.102 (1)	Norlevorphanol
1	481.102 (1)	Normethadone
3	481.104 (a) (9)	Normethandrolone
1	481.102 (2)	Normorphine
1	481.102 (1)	Norpipanone
1	481.102 (3) (A)	opiate
1	481.102 (3) (A)	Opium
3	481.104 (a) (4)	opium
4	481.105 (1)	opium
1	481.102 (3) (A)	Opium extracts
1	481.102 (3) (A)	Opium fluid extracts
1	481.102 (3) (C)	Opium poppy
3	481.104 (a) (7)	organometallic complexes
1	481.102 (a) (3) (A)	Oripavine
3	481.104 (a) (9)	Oxandrolone
3	481.104 (a) (2)	Oxazepam
3	481.104 (a) (2)	Oxazolam
1	481.102 (3) (A)	Oxycodone
3	481.104 (a) (9)	Oxymesterone
3	481.104 (a) (9)	Oxymetholone
1	481.102 (3) (A)	Oxymorphine
2	481.103 (a) (2)	P2P
1	481.102 (4)	Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]propanamide)
2	481.103 (a) (1)	Parahexyl
3	481.104 (a) (5)	Paraldehyde
2	481.103 (a) (1)	paramethoxyamphetamine
2	481.103 (a) (1)	PCC
2	481.103 (a) (1)	PCE
2	481.103 (a) (1)	PCPy
3	481.104 (a) (7)	Pemoline
3	481.104 (a) (2)	Pentazocine
3	481.104 (a) (2)	Pentobarbital
3	481.104 (a) (2)	pentobarbital
2	481.103 (a) (4)	Pentylone
1	481.102 (4)	PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine)
1	481.102 (4)	Pethidine
1	481.102 (4)	Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine

1	481.102 (4)	Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4 carboxylate
1	481.102 (4)	Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
3	481.104 (a) (5)	Petrichloral
3	481.104 (a) (6)	Peyote
1	481.102 (1)	Phenadoxone
1	481.102 (1)	Phenampramide
1	481.102 (3) (E)	phenanthrine alkaloids
1	481.102 (4)	Phenazocine
1	481.102 (8)	Phencyclidine
3	481.104 (a) (7)	Phendimetrazine
3	481.104 (a) (1)	Phenmetrazine
3	481.104 (a) (5)	Phenobarbital
1	481.102 (1)	Phenomorphane
1	481.102 (1)	Phenoperidine
3	481.104 (a) (7)	Phentermine
2	481.103 (a) (2)	Phenyl-2-propanone
1	481.102 (7)	Phenylacetone
2	481.103 (a) (2)	Phenylacetone
2-A	481.1031	certain phenylacetylindoles (including certain AM- and JWH- derivatives)
2	481.103 (a) (1)	(1-phenylcyclohexyl) ethylamine
2	481.103 (a) (1)	N-(1-phenylcyclohexyl) ethylamine
2	481.103 (a) (1)	1-(1-phenylcyclohexyl)-pyrrolidine
2	481.103 (a) (1)	1-Phenylcyclohexylamine
1	481.102 (2)	Pholcodine
2	481.103 (a) (1)	PHP
1	481.102 (4)	Piminodine
3	481.104 (a) (2)	Pinazepam
2	481.103 (a) (1)	1-Piperidinocyclohexanecarbonitrile
3	481.104 (a) (7)	Pipradrol
1	481.102 (1)	Piritramide
2	481.103 (a) (1)	PMA
1	481.102 (3) (C) , (E)	poppy straw
1	481.102 (3) (A)	Powdered opium
2	481.103 (a) (1)	PPMP
3	481.104 (a) (2)	Prazepam
1	481.102 (1)	Proheptazine
1	481.102 (1)	Properidine
1	481.102 (1)	Propiram
2	481.103 (a) (1)	Psilocin
2	481.103 (a) (1)	Psilocybin
4	481.105 (4)	Pyrovalerone
2	481.103 (a) (1)	Pyrrolidine Analog of Phencyclidine
3	481.104 (a) (2)	Quazepam
1	481.102 (4)	Racemethorphan
1	481.102 (4)	Racemorphan
1	481.102 (3) (A)	Raw opium
1	481.102 (4)	Remifentanil
1	481.102 (5)	Rohypnol
3	481.104 (a) (2)	secobarbital
3	481.104 (a) (7)	Sibutramine
3	481.104 (a) (7)	SPA [(-)-1-dimethyl-amino-1,2-diphenyl-ethane]
3	481.104 (a) (9)	Stanozolol
3	481.104 (a) (9)	Stenbolone
2	481.103 (a) (1)	STP
1	481.102 (1)	Sufentanil
3	481.104 (a) (2)	Sulfondiethylmethane
3	481.104 (a) (2)	Sulfonethylmethane
3	481.104 (a) (2)	Sulfonmethane
2	481.103 (a) (1)	Synhexyl
2	481.103 (a) (1)	tabernanthe iboga
2	481.103 (a) (1)	TCP
2	481.103 (a) (1)	TCPy
3	481.104 (a) (2)	Telazol
3	481.104 (a) (2)	Temazepam

3	481.104 (a) (9)	Testolactone
3	481.104 (a) (9)	Testosterone
2	481.103 (a) (1)	Tetrahydrocannabinols
3	481.104 (a) (9)	Tetrahydrogestrinone
3	481.104 (a) (2)	Tetrazepam
2	481.103 (a) (1)	TFMPP
1	481.102 (2)	Thebacon
1	481.102 (3) (A)	Thebaine
2	481.103 (a) (1)	2-Thienyl Analog of Phencyclidine
2	481.103 (a) (1)	1-[1-(2-thienyl) cyclohexyl] piperidine
2	481.103 (a) (1)	1-[1-(2-thienyl) cyclohexyl] pyrrolidine
1	481.102 (4)	Thiofentanyl (N-phenyl-N-[1-(2-thienyl (ethyl-4-piperidinyl)]-propanamide)
2	481.103 (a) (1)	Thiophene Analog of Phencyclidine
3	481.104 (a) (2)	Tiletamine
1	481.102 (1)	Tilidine
1	481.102 (3) (A)	Tincture of opium
2	481.103 (a) (1)	TPCP
2	481.103 (a) (1)	(+)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one
2	481.103 (a) (1)	(a6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo-[b,d]pyran-1-ol
3	481.104 (a) (9)	Trenbolone
3	481.104 (a) (2)	Triazolam
3	481.103 (a) (3)	1-(3-trifluoromethylphenyl)piperazine
1	481.102 (1)	Trimeperidine
2	481.103 (a) (1)	3,4,5-trimethoxy amphetamine
2	481.103 (a) (1)	N,N,alpha-trimethylbenzeneethaneamine
2	481.103 (a) (1)	N,N,alpha-trimethylphenethylamine
2	481.103 (a) (3)	UR 1431
2-A	481.1031	certain WIN- derivatives of certain compounds
3	481.104 (a) (2)	Zaleplon
3	481.104 (a) (2)	zolazepam
3	481.104 (a) (2)	Zolpidem
3	481.104 (a) (2)	Zopiclone

**Texas Health and Safety Code
Title 6. Food, Drugs, Alcohol, and Hazardous Substances
Subtitle C. Substance Abuse Regulation and Crimes
Chapter 481. Texas Controlled Substances Act
Subchapter A. General Provisions**

Sec. 481.001. Short Title.

This chapter may be cited as the Texas Controlled Substances Act.

The [federal] Controlled Substances Act does not allow the United States Attorney General to prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide, notwithstanding a state law permitting the procedure. *Gonzales v Oregon*, 546 U.S. 243 (2006)

The Controlled Substances Act is not preempted by federal law. *Bright v S*, 556/317.

The Controlled Substances Act is not in conflict with federal drug act for providing harsher penalties. *Miller v S*, 537/725.

The Controlled Substances Act is not in conflict with federal drug law, 21 USC 844(a), 903; and the difference of penalties for possession under the two laws does not create a "positive conflict" under the terms of 21 USC 903, which negates intent of Congress to occupy the field unless there is a "positive conflict" between federal law and state law "so that the two cannot consistently stand together." *Wilson v S*, 525/30.

CONSTITUTIONALITY

The punishment provisions of the Controlled Substances Act are not in conflict with the federal drug laws, 21 USC 801 et seq. *Reynolds v S*, 548/733; *Wilson v S*, 525/30; *Miller v S*, 537/725.

Evid was not insuff due to failure to introduce drugs in evid, where nature of drugs and chain of custody were proven, drugs were in courtroom and available to def and witnesses. *Wallace v S*, 770<5>874.

In pros for poss of controlled substance, def could not complain of evid of value of pills in his possession, where she first elicited evidence of their value. *Wilkerson v S*, 736/656.

No error presented by introduction of evidence of effect of pills not part of offense on trial, where they were seized at same time as pills charged in indictment and the other pills were admissible as res gestae. *Wilkerson v S*, 736/656.

It was not error for experienced officer to testify to value of cocaine as well as how many persons could get high from amount involved in instant case. *Thibedeau v S*, 739<9>482.

EVIDENCE

In pros for marihuana it was not error to admit testimony of its value. *Martin v S*, 823<10>726.

In pros for poss with intent to deliver cocaine, testimony* about value of crack cocaine was irrelevant, but had no importance in context of entire trial, so error was harmless. *Castiblanco-Gomez v S*, 882<1>564 (1994)

It was reversible error to admit submission form that accompanied baggies containing cocaine residue when they were turned into lab for testing, over hearsay objection. *Thomas v S*, 807<1>786.

An envelope of writings* by an undercover officer who made drug purchase should not have been admitted, but the error was harmless where the writings did not contain "a neat condensation of the government's whole case" against defendant, because neither the name of the offense nor identification of the substance was on the exhibit as introduced, the trial court having sustained the objection in part, **DISTINGUISHING** *Coulter v S*, 494/876. *Wilkes v S*, 566/299.

Fact that business records act, article 3737e, Civil Statutes, is satisfied does not allow admission of evidence envelope, because such evidence lacks additional indicia of reliability. *Battee v S*, 543/91.

EVIDENCE ENVELOPE

Fact that the witness who made and recorded information on the evidence envelope is present at trial for cross examination does not prevent reversal for admission of the evidence envelope. *Battee v S*, 543/91.

Admission of exhibit with evid tag including statement "One bag of cocaine" over hearsay objection was harmless where testimony had previously shown exhibit contained cocaine. *Parramore v S*, 853<13>741.

It was reversible error to refuse requested charge on mere presence in charge on corroboration of accomplice witness testimony, where evid raised issue. *Golden v S*, 851/291.

A private citizen working undercover for the police is not an accomplice witness merely because he is not a police officer; and evidence is not insufficient for failure to corroborate him. *Parr v S*, 606/928.

Undercover police officer is not an accomplice witness under Article 38.14 Code of Criminal Procedure, so long as he does not bring about the crime, but merely obtains evidence to use against those engaged in the traffic. *Howery v S*, 528/230; *Ramos v S*, 632<7>688; *Lopez v S*, 574/563; *Guerrero v S*,

507/765; *Pearce v S*, 513/539; *Gonzales v S*, 505/267; *Holdaway v S*, 505/262; *Hayslip v S*, 502/119.

ACCOMPLICE WITNESS

Police officer was not an accomplice witness where on prior occasions he had asked defendant if he knew where he could buy some heroin or methamphetamine, but on the day of the offense defendant called the officer and offered to sell him eight lids of marihuana. *Darrow v S*, 504/416.

No accomplice witness charge is required where defendant admits the act and asserts defenses of entrapment and accommodation agency. *Redman v S*, 533/29 (sale of marihuana).

THE EVIDENCE WAS SUFFICIENT TO CORROBORATE THE ACCOMPLICE WITNESS WHERE:

: defendant admitted the offense to a private detective. *Stephenson v S*, 517/277 (conspiracy to possess marihuana under prior law).

: defendant was seen driving the car in which the marihuana was found. *Attwood v S*, 509/342 (possession of marihuana under prior law).

IT WAS NOT ERROR TO REFUSE AN ACCOMPLICE WITNESS CHARGE WHERE:

: there was no evidence the undercover officer acted to bring about the crime. *Lopez v S*, 574/563.

: the witness was an undercover agent who did not bring about the crime charged, but merely obtained evidence to be used against defendant. *Ramos v S*, 632<7>688.

: the evidence did not show the officer brought about the crime. *Guerrero v S*, 507/765 (sale of marihuana).

LABORATORY REPORT

Defendant is entitled to have any alleged contraband tested by his own chemist on timely request. *Mendoza v S*, 583/396.

No merit to claim of bad faith destruction of cocaine before def could have independent analysis where record showed def never requested independent analysis. *Richardson v S*, 862<9>191 (1993)

Where court of criminal appeals found was error to deny def's motion for appointment of chemist, held: under facts of case

39.14 was mandatory, and failure to comply was reversible error not subject to harm analysis because it would be extremely difficult, if not impossible, to ascertain with any degree of certainty the impact of the error on the jury (def had right to inspect cocaine that was basis for state's case, and purity of the substance was material to defensive theories def raised at trial). *McBride v S*, 873<7>115

DEF'S RIGHT TO INDEPENDNT ANALYSIS

It was error to deny defendant's motion under article 39.14, Code of Criminal Procedure, for an independent examination of marihuana, and failure of motion to refer to presence of District Attorney at examination does not render the motion insufficient since under article 39.14 the court specifies the time, place, and manner of inspection, and the motion specifically referred the trial court to article 39.14. Terrell v S, 521/618. (citing Detmering v S, 481/863)

It was not error to deny a motion for independent analysis of narcotic paraphernalia where the state's evidence showed that after analysis by the state's chemist no residue remained on the paraphernalia for a subsequent analysis, so defendant could not have benefited from a later analysis, distinguishing Detmering v S, 481/863. Montes v S, 503/241 (poss of narcotic paraphernalia under prior law).

RULES ON ADMITTING LAB TESTS Under business records exception to the hearsay rule, an expert may testify about test results obtained by another chemist. Brown v S, 807<14>615.

State may introduce lab report into evid if requirements for business records are met. Neptune v S, 679<5>168.

A toxicologist's testimony concerning test results obtained by his subordinates is not rendered inadmissible as hearsay merely because he did not personally test the substances. Brown v S, 807<14>615.

An expert witness may testify about results of a laboratory analysis he did not personally perform only if he also testifies that a qualified expert under his supervision performed the analysis. Neptune v S, 679<5>168.

When requirements for admission of drug analysis are not met, testimony on results by expert who did not personally conduct analysis is inadmissible hearsay. Neptune v S, 679<5>168.

EVIDENCE ADMISSIBLE **DISTINGUISHING** Cole v S, 839/798: Chemists at Dallas County Forensic Laboratory were sufficiently removed from law enforcement process to not be law enforcement personnel, so drug analysis report and testimony of sponsoring witness who was supervisor and had not actually performed tests or prepared reports, were admissible under Rule 803(6) and (8) exceptions of hearsay rule; lab functions independently of any law enforcement body and its services are available to any person, public or private, who wishes to pay the lab fees. Caw v S, 851<8>322.

Lab report or notes of chemist, when testifying chemist actually performed the tests, is not impermissible bolstering nor impermissible hearsay. Wilson v S, 854<7>270.

It was not error to admit over hearsay objection, testimony of lab supervisor of test results obtained by his subordinate. Simpson v S, 701<2>698.

Testimony of lab supervisor to test results in report made by lab subordinate under his supervision was not subject to hearsay objection. Simpson v S, 709<2>797.

Lab reports were admissible under TRCrE 803(6) where supervisor of lab testified to predicate; was not necessary to prove unavailability of chemist who performed tests; fact supervisor of lab was not supervisor at time of tests did not render test results inadmissible where he testified to facts showing indicia of reliability. Hayden v S, 753<9>461.

Evid was suff to prove matter was controlled substance where witness did not actually supervise testing of substance, but tests were performed by another DPS chemist and witness described in detail the tests conducted, and nothing indicated the tests were not run correctly or that the records were not prepared properly. Brown v S, 807<14>615.

ERROR TO ADMIT Reports of chemist from DPS crime lab who was not present to testify were matters observed by law enforcement personnel and were inadmissible under Rule 803(8)(B); and 803(6) should not have served as alternative route for admissibility of evid otherwise barred by 803(8). Cole v S, 839/798.

It was reversible error to admit laboratory results where the chemist testified to an analysis performed by X under his supervision, but the record did not show X's qualifications, did not show she was a chemist, lab technician, or otherwise qualified to perform the analysis. Jones v S, 611/64.

It was error to allow supervising chemist to testify from lab notes of chemist who performed tests over hearsay objection and in violation of right to confrontation, where the reports were not admissible under 803(8) or 803(6); since there was no other evid of identity of substance, error was not harmless. Nevarez v S, 832<10>82.

It was error to admit, as business records (803(6)), over hearsay and confrontation objections, lab report and testimony of lab supervisor based on report, where lab report was prepared at police lab by chemist who was not present to testify. Davenport v S, 856<1>578.

HARMLESS In challenge to suff of evid to show substance was cocaine, any error in admitting lab report was harmless where p/o testified to field test that showed substance was cocaine. Wigley v S, 705<4>264.

Error in admitting lab report showing substance was marihuana, by testimony of chemist who did not conduct test, in violation of 803(8)(B), was harmless where two other witnesses testified without objection that substance was marihuana and was no evid it was not marihuana. Canida v S, 848<6>919.

CHAIN OF CUSTODY

RULES Rule 901 does not require state to prove anything, but only requires a showing that satisfies the trial court that the matter in question is what the state claims. Thus, proof of chain of custody goes to the weight, not admissibility, of the evid. Silva v S, 989<4>64 (1998)

Adoption of rules of evid (see Rule 901(a)) did not change law of chain of custody. Garner v S, 939<2>802 (1997)

The question of any discrepancy in the source or positive identity of physical evid is for the fact-finder to resolve. Levi v S, 809<9>668.

A chain of custody is conclusively proven if an officer is able to identify that he or she seized the item of physical evidence, put an identification mark on it, placed it in the property room, and then retrieved the item being offered on the day of trial. Alvarez v S, 857<13>143 (1993)

If a substance is properly identified, most questions concerning care and custody go to the weight given the evidence and not to

its admissibility, absent a showing that the substance was tampered with or changed. Alvarez v S, 857<13>143 (1993)

When the State shows the beginning and the end of the chain of custody, any gaps in between go to weight rather than admissibility, particularly when the chain goes inside the laboratory. Alvarez v S, 857<13>143 (1993)

If a substance is properly identified, most questions concerning care and custody go to the weight to be given the evid, not its admissibility, absent a showing that the substance was tampered with or changed; where the state shows the beginning and the end of the chain of custody, any gaps in between go to weight rather than admissibility, particularly where the chain goes inside the lab. Gallegos v S, 776<14>312.

Def failed to preserve issue on admission of cocaine for chain of custody, where was no trial objection. Wright v S, 853<13>154.

THE CHAIN OF CUSTODY WAS SUFFICIENT WHERE:

: chain of custody affidavits established complete chain of custody from seizure to laboratory and record revealed no gaps in the chain. Young v S, 183<12>699 (2005)

: state showed complete chain of custody from seizure to lab; was no evid of tampering, so any gaps caused by testimony went to weight, not admissibility. Foster v S, 101<1>490 (2002)

: undisputed testimony showed proper chain of custody of cocaine from its seizure at crime scene to its presentation in court. Ford v S, 26<13>669 (2000)

: one witness identified exhibits and testified to putting cocaine she had purchased into evid envelope, second witness testified to transport of envelope from first witness to lab, and third

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Double jeopardy barred prosecution of def for poss of cocaine residue in his pocket after jury acquitted def on charge of poss of cocaine rocks behind seat in vehicle def was driving. Def's simultaneous possession of cocaine in his pocket and in truck he was driving would constitute a single offense. No merit to state's contention that def was estopped from asserting jeopardy bar because def obtained jury charge* over state's objection that excluded jury's consideration of evid of cocaine residue in def's pocket. Ep Hill, 48<3>283 (2001)

It was violation of jeopardy to prosecute def for poss of less than 28 grams of controlled substance (4.04(a), CSA) after he had obtained acquittal on appeal from conv for poss of over 400 grams (4.04(c), CSA), where state was relying on same historical facts in both prosecutions; under state and US constitutions, all such issues must be resolved in a single trial, and may not be made subject of successive prosecutions. S v Engelking, 817/64.

Where def was tried on indictment charging poss of methamphetamine in one count and manufacture of methamphetamine in second count, and jury returned verdict finding def guilty of both, then state abandoned poss count and punishment verdict was returned only on conv for manufacture, def was never convicted of possession. Chapin v S, 671<1>608.

It was not abuse of discretion to deny pre-trial application for writ of habeas corpus on claim of collateral estoppel against pros for poss with intent to deliver cocaine based on prior civil forfeiture proceeding that found failure of state to prove connection between def and currency on one hand and contraband on the other hand, granting forfeiture of contraband but denying forfeiture of currency; there was no finding of failure to prove any connection between def or currency on one hand

Sec. 481.002. Definitions.

In this chapter:

(1) "Administer" means to directly apply a controlled substance by injection, inhalation, ingestion, or other means to the body of a patient or research subject by:

- (A) a practitioner or an agent of the practitioner in the presence of the practitioner; or
- (B) the patient or research subject at the direction and in the presence of a practitioner.

Three forms of delivery under section 1.02(8) are administering, section 1.02(1), dispensing, section 1.02(10), and distributing, section 1.02(12). Santoscoy v S, 596/896.

Where charge in pros for over 400 grams included charge on lesser offenses of less than 400 grams, insuff evid to support conv for over 400 grams permitted remand where evid was suff on included offense. Hickman v S, 835<1>244.

Prior acquittal for delivery of controlled substance by actual transfer created jeopardy bar to prosecution for poss of the same substance. S v Baker, 761<11>465.

Def was exempt from second trial or prosecution for delivery of at least 400 grams of cocaine because his previous conviction for the lesser included offense of delivery of 200 but less than 400 grams of cocaine was an acquittal of the greater offense, so prosecution for the greater offense was barred under 1.11 and 37.14 CCP, without reliance on double jeopardy clauses of Texas or US constitutions (even though the first conviction was set aside on def's motion for new trial). Boulos v S, 775<1>8.

Where state voluntarily abandoned poss count at punishment stage after jury had returned guilty verdict on poss and manufacture counts, there was no "manifest necessity" for a retrial on the poss count, so retrial on that count is barred by jeopardy. Chapin v S, 671<1>608.

Prior possession of heroin case did not create a jeopardy bar to possession of marihuana case where the heroin case was dismissed. Downey v S, 505/907.

and contraband on the other; the issues of ultimate fact in the two proceedings were different. Green v S, 813<1>703.

Collateral estoppel did not bar conv where X was convicted of possession of quantity of drugs and def later was convicted of possession of quantity at same location, but evid showed each possessed different quantities of drugs. Uhrich v S, 765<3>905.

JEOPARDY & PRIOR ACQUITTAL

JEOPARDY & STATE ABANDONS ONE CASE

COLLATERAL ESTOPPEL

NOTES

NOTES

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term does not include a common or contract carrier, public warehouseman, or employee of a carrier or warehouseman acting in the usual and lawful course of employment.

(3) "Commissioner" means the commissioner of public health or the commissioner's designee.

(4) "Controlled premises" means:

(A) a place where original or other records or documents required under this chapter are kept or are required to be kept; or

(B) a place, including a factory, warehouse, other establishment, or conveyance, where a person registered under this chapter may lawfully hold, manufacture, distribute, dispense, administer, possess, or otherwise dispose of a controlled substance or other item governed by this chapter, including a chemical precursor and a chemical laboratory apparatus.

(5) "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

It is not absurd to include byproducts necessary to the manufacturing process in definition of adulterant and dilutant, and it does not lead to an absurd result to include the unusable toxic liquids in the aggregate weight of the controlled substance. Wright v S, 201/765 (2006)

Former 481.002(5), defining controlled substance as including "the aggregate weight of any mixture, solution, or other substance containing a controlled substance," was not violation of Equal Protection Clause. Def was not a member of a suspect class; state has legitimate interest in protecting the public health, safety, and morals; and def was not treated differently than any other def found in possession of more than 400 grams of a controlled substance. Ingram v S, 124<11>672 (2003)

The term "controlled substance" includes the "aggregate weight of any mixture, solution, or other substance containing a controlled substance." Where jury heard testimony that rocks of crack cocaine were all found in one bag and was permitted to inspect the bag and its contents in order to see the similarities in

appearance, it was reasonable for jury to infer the 35 to 40 rocks composed a mixture of crack cocaine, even if some of rocks contained no cocaine. Under these circs state is not required to test each rock to determine whether it contained cocaine. Melton v S, 120/339 (2003)

In conv for delivery of cocaine evid was legally and factually suff where undercover officer testified to offense and expert testified to cocaine. No merit to def's contention evid was insuff because charge did not include definition of controlled substance in 481.002(5); a hypothetically correct charge would have included definition, and measured against such charge evid was suff; also, evid was suff even without such charge because "adulterants" and "dilutants" are part of definition of controlled substance. Lilly v S, 119<11>900 (2003)

In conv for possession of cocaine, evid was not insuff on claim state presented no evid of existence of any adulterants or dilutants. No merit to contention state was required to specifically identify adulterants and dilutants and to prove their

total weight; def relied on cases before 1994 amendments. State only has to prove that aggregate weight of controlled substance mixture, including adulterants and dilutants, equals minimum weight alleged. *Isassi v S*, 91<8>807 (2002)

In pros for poss of methamphetamine evid was suff where expert witness testified aggregate weight of methamphetamine, including any adulterants and/or dilutants, was 1,093.7 grams, which is greater than 400 grams; his conclusion was not called into question by defense by cross examination, defense testimony, objection, or otherwise; *Cawthon v S*, 849/346, distinguished, because expert's conclusion was not challenged by defense. *Short v S*, 874/666

In conv for poss with intent to deliver of 28 grams or more, evid was suff to prove weight, over contention evid did not show tested sample was representative sample and did not show adulterants and dilutants were added with intent to increase the

bulk or quantity of the amphetamine; where witness testified the powder was 20% amphetamine and 80% adulterants and dilutants, and the aggregate weight was 128.76 grams. *Cawthon v S*, 795<12>818.

In conv for poss with intent to deliver over 400 grams of cocaine, evid was not insuff for failure to prove effect of adulterants and/or dilutants on chemical activity of the cocaine, where evid was suff to prove over 400 grams of pure cocaine, so state was not relying on adulterants and/or dilutants to prove the alleged quantity. *Castiblanco-Gomez v S*, 882<1>564 (1994)

In pros for poss of cocaine it was not error to refuse charge defining cocaine, where no evid raised issue of whether substance was a counterfeit or simulated substance. *Washington v S*, 905<14>665 (1995)

(6) "Controlled substance analogue" means:

(A) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, or 2; or

(B) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, or 2.

(7) "Counterfeit substance" means a controlled substance that, without authorization, bears or is in a container or has a label that bears an actual or simulated trademark, trade name, or other identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(8) "Deliver" means to transfer, actually or constructively, to another a controlled substance, counterfeit substance, or drug paraphernalia, regardless of whether there is an agency relationship. The term includes offering to sell a controlled substance, counterfeit substance, or drug paraphernalia.

(9) "Delivery" or "drug transaction" means the act of delivering.

Also see 481.183 on requirement of corroboration to prove offer to sell.
Also see offenses at 481.112-481.114 and casenotes following 481.114.

CONSTITUTIONALITY Definition of delivery in 481.001(8) is not unconstitutional violation of free speech; offer to sell a controlled substance is not speech protected by First Amendment. *Knight v S*, 91<10>418 (2002)

In pros for delivery by offering to sell, held "offer" is not unconstitutionally vague. Offer can be by words or deeds. Def's conduct was clearly within offense where def took buyer to person who gave buyer sample, five days later def made two

calls to people who were to bring drugs to sale, twelve days after that def arranged final meeting with buyer and told buyer he had someone who could supply the drugs and waited for buyer's return with the money for the sale. *Schneider v S*, 951<6>856 (1997)

Failure to define "offer to sell" does not render statute unconstitutionally vague. *Francis v S*, 890<7>510 (1994)

CONSTRUCTION Delivery includes not only actual or constructive transfer, but also an offer to sell. *Taylor v S*, 674<10>323.

Dispensing and delivery are not mutually exclusive; delivery, section 1.02(8), includes dispensing, section 1.02(10). *Santoscoy v S*, 596/896.

Delivery includes sharing drugs with third persons, and is not limited to commercial ventures. *Fontenot v S*, 792<5>250.

"Intent to deliver marihuana" is not a delivery under the Controlled Substances Act, *Tovar v S*, 612/616.

There are no occasions where one is authorized to deliver heroin. *Lee v S*, 632<14>816.

ACTUAL DELIVERY An allegation of delivery of a controlled substance by actual transfer to an unborn child cannot constitute delivery, which contemplates the manual transfer of property from the transferor to the transferee or to the transferee's agents or to someone identified in law with the transferee. Such a transfer occurs when the defendant transfers or surrenders actual possession and control of a controlled substance to another. Since such an actual transfer delivery from a mother to her unborn child is not possible, as a matter of law such delivery by actual transfer could not occur. *Ep Perales*, 215/418 (2007)

Actual transfer consists in transferring the real poss and control of controlled substance from one person to another. *Nevarez v S*, 767/766.

Actual transfer contemplates the manual transfer of property from the transferor to the transferee or to the transferee's agents or to someone identified in law with the transferee. *Heberling v S*, 834/350.

A completed transfer occurs when the actor completely and unequivocally relinquishes possession of the substance in favor of the recipient; that the recipient does not reduce the

substance to physical possession does not mean there has been no actual delivery; there can be an actual delivery to the constructive custody of a recipient. *Valladares v S*, 800<6>274.

A delivery may be accomplished by nothing more than making a thing available to another, placing it within his reach, notwithstanding there is no actual handing of the thing from one person to another. *Valladares v S*, 800<6>274.

Where delivery of drugs was between undercover officer and informant, acting under directions of def, fact neither officer nor informant could be convicted for offense did not bar conv of def as party to offense under 7.03(2) PC for actual delivery; since delivery was at def's instruction, conv as party to actual delivery was proper. *Boyer v S*, 801/897.

If transferor knows he is delivering to a group for the members' joint acquisition, his transfer to even one lone member of the group is the ultimate transaction and constitutes an actual delivery to each and every member of that transferee group. *Stone v S*, 794<8>868.

CONSTRUCTIVE DELIVERY One method of constructive transfer is for the transferor to instruct the recipient on the location of the contraband. If the contraband is already in place, the constructive transfer is complete at the time the transferor gives the instruction. When the recipient retrieves the contraband, there is then a completed actual transfer. *Sims v S*, 117/267 (2003)

A constructive transfer requires that the transferor be aware of the existence of the ultimate transferee, but does not require the

transferor know the identity or be acquainted with the ultimate recipient. It only requires def must have contemplated that his initial transfer would not be the final transaction in the chain of distribution. *Wyatt v S*, 951<14>144 (1997)

Requirement in constructive transfer that transferor be aware of existence of ultimate transferee does not require him to know identity of or be acquainted with the ultimate transferee, but only that def must have contemplated that his initial transfer would

DEFINITIONS - DELIVERY

481.002(9)

not be the final transaction in the chain of distribution. Daniels v S, 754/214.

Under CSA delivery includes constructive transfer of controlled substance; a constructive transfer is the transfer of a controlled substance either belonging to an individual or under his control by some other person or agency at the instance or direction of the individual accused of the constructive transfer. Henderson v

S, 681<14>173.

Constructive transfer should not be limited to identity of parties making transfer, but should include transfer where parties have taken all steps necessary to place goods at disposal of transferee, where due to nature of goods actual manual delivery is impractical under circumstances. Torres v S, 667<13>190.

When delivery is by offer to sell, no transfer need take place; def need not even have any controlled substance; all he need do is state he had controlled substance he would sell; the offense is complete when, by words or deed, a person knowingly or intentionally offers to sell what he states is a controlled substance; fact that the substance is later found not to be a controlled substance does not render the evid insuff to prove offense of delivery by offer to sell a controlled substance. Stewart v S, 718/286.

The offense of delivery by offer to sell is complete when def makes his offer; fact substance later turns out to be less or not what was offered is not on its own enough to render evid insuff.

Vivanco v S, 825<14>187.

The chemical properties of the substance actually delivered are not an element of offense of delivery by offer to sell. Vivanco v S, 825<14>187.

**DELIVERY
BY OFFER
TO SELL**

To convict for offer to sell controlled substance, the material need not actually have been a controlled substance; def need only have verbalized his intention to transfer a controlled substance in return for a fee and exhibited conduct consistent with the subjective belief that the substance offered for sale was a controlled substance. Stewart v S, 693<14>11.

Where indictment alleged in two counts two alternative means of delivery, it was proper for state to dismiss second count before jury submission to avoid two convictions for single offense. Garber v S, 667<8>611.

Indictment for delivery of controlled substance was not duplicitous for alleging facts constituting offense under 4.053 and 4.03, and allegation that deliverer was a secondary student was not an essential element under 4.03 and could be abandoned by state. Stockton v S, 756<3>873.

It was not improper amendment of indictment to allow state, in pros for delivery of controlled substance, to abandon allegation that it was delivered to person enrolled in a secondary school,

which constituted abandonment of greater offense (CSA 4.053) and prosecution on included offense (CSA 4.03). Stockton v S, 756<3>873.

INDICTMENT

Indictment* for delivery of heroin was not fundamentally defective for failure to allege delivery was not authorized by the act, section 4.03(a), because section 5.10 provides the state need not negate exceptions or exemptions under the Controlled Substances Act. Bailey v S, 559/957.

An indictment for delivery of tetrahydrocannabinol may allege "other than marihuana" or "listed in penalty group 2" because either is sufficient to show jurisdiction. Ellerbee v S, 631/480.

Def received suff notice of charge where indictment alleged actual delivery of a controlled substance. No merit to contention that def was deprived of suff notice because state did not allege it would rely on proof of actual delivery under law of parties. Marable v S, 990<6>421 (1999)

It was error to grant motion to quash indictment for alleging all three means of committing delivery of controlled substance; def had suff notice to prepare to defend a prosecution on all three theories of delivery; state may plead alternative means in separate paragraphs. S v Garrett, 798<1>311.

Indictment for delivery by constructive transfer was not subject to motion to quash seeking notice of constructive transfer. Daniels v S, 754/214.

Indictment for delivery of controlled substance was not fund defective and would not have been subject to motion to quash, for alleging actual transfer, constructive transfer, offer to sell, and poss with intent to sell; all types of delivery can be alleged

in single indictment. Tejerina v S, 786<13>508.

Indictment* for delivery of controlled substance alleging actual or constructive transfer in disjunctive was not subject to motion to quash for lack of notice; if error, def was not harmed. Torres v S, 754<13>397.

**NOT
SUBJECT TO
MOTION TO
QUASH**

Indictment for delivery of marihuana was not subject to motion to quash for failure to specify means of delivery where it alleged delivery by actual transfer. Esterline v S, 707<13>171.

It was not abuse of discretion to deny motion to quash indictment for delivery of controlled substance, for failure of term "constructive transfer" to give sufficient notice; state need not allege the precise manner by which a specified type of delivery was performed; and def did not present any evid or put on any witnesses and did not show how he was harmed by denial of the motion. Woods v S, 734<1>414.

Indictment* for delivery was not defective for failure to specify how constructive delivery was made. Elliott v S, 766<6>361.

Indictment* for delivery of controlled substance by offer to sell was not fund defective for failure to allege def intentionally offered to sell where it alleged he intentionally and knowingly delivered by offering to sell. Taylor v S, 674<10>323.

The indictment* was not fundamentally defective for failure to allege the manner of delivery, although it would be subject to a motion to quash, but the motion to quash* here was insufficient to point out the defect to the trial court, and without a record of the hearing on the motion to quash it is presumed the trial court acted correctly. Martinez v S, 640<4>378 (delivery of heroin &

cocaine mixture).

Indictment* for delivery of controlled substance was not fundamentally defective for alleging a third degree felony that was in fact a first degree felony, where language relied on by defendant was notation before commencement of indictment and not part of indictment. Milo v S, 663<9>483.

**NOT FUND
DEFECTIVE**

Indictment* for delivery of heroin was not fundamentally defective for alleging delivery without specifying which of three alternative means of delivery from section 1.02(8). Anderson v S, 615/745.

The indictment* was not fundamentally defective for failure to allege the manner of delivery, although it would be subject to a motion to quash, but the motion to quash* here was insufficient to point out the defect to the trial court, and without a record of the hearing on the motion to quash it is presumed the trial court acted correctly. Martinez v S, 640<4>378 (delivery of heroin & cocaine mixture).

Indictment* for delivery of cocaine was subject to motion to quash for failure to specify type of delivery state would attempt to prove, which was insuff notice & insuff to bar future convs.

King v S, 656<2>617.

In pros for constructive delivery of marihuana it was error to deny motion to quash for failure to give suff notice of what acts constituted constructive transfer. Daniels v S, 674<3>388.

**SUBJECT TO
MOTION TO
QUASH**

Indictment* for delivery of heroin was subject to motion to quash for failure to specify whether delivery was by actual or constructive transfer or by offer to sell. Ferguson v S, 622/846.

Indictment* for delivery of cocaine was defective for failure to allege an offense, where it alleged def delivered cocaine by receiving it. Williams v S, 783<13>301.

Indictment* for possession of marihuana with intent to deliver was fundamentally defective because "intent to deliver

marihuana" is not a delivery under the Controlled Substances Act, amount possessed was not alleged, and amount delivered was not alleged, delivery for remuneration was not alleged, so no felony offense was alleged. Tovar v S, 612/616.

**INDICTMENT
DEFECTIVE**

Indictment* for delivery of codeine was defective for failure to allege the amount involved or the penalty group, Sec. 4.02, so as to reflect the penalty involved, Sec. 4.03, and whether felony

or misdemeanor jurisdiction was invoked. *Benoit v S*, 561/810.

PLEADING No merit to contention def was denied constitutional rights to notice of charges, procedural due process, and a fair and impartial trial by indictment* that failed to plead whether delivery of controlled substance to X was (1) as agent for Y or (2) as co-def under law of parties. State is not required to plead delivery as agent or law of parties. *Young v S*, 183<12>699 (2005)

In conv for delivery by offering to sell a controlled substance, conv reversed where under facts state should have charged def with delivery of a simulated controlled substance. *Ramos v S*, 928<14>160 (1996)

It was not error to prosecute def for two separate offenses, one for delivery of sample of cocaine and separately for the later

delivery of the larger quantity. *Jimenez v S*, 739<13>499.

In pros on two charges, it was not error to deny motion to require state to elect, and to convict def for two separate offenses, one for delivery of sample of cocaine and separately for the later delivery of the larger quantity (on contention it was a single transaction). *Jimenez v S*, 739<13>499.

In pros for delivery by offer to sell, where def represented that he could supply eight kilos of cocaine and it later turned out to be 6.48 grams of cocaine and the rest was flour was irrelevant, it was not error not to charge def with delivery of simulated controlled substance instead of delivery of controlled substance by offer to sell. *Vivanco v S*, 825<14>187.

EVIDENCE SUFFICIENT In conv for a delivery of a controlled substance evid was suff where undercover officer saw parked car with a person in driver's seat and person standing at passenger window conversing with person inside car, person at window said "hey, man, what do you want?" and officer told him "I'm looking for a 20" and def said "I got you" and stepped out of driver's side of car, walked to passenger side of officer's vehicle, and gave him a blue baggie containing crack cocaine after officer gave him a \$20 bill. Officer made in-court identification of def as person who sold him the cocaine. Arresting officer testified def told him "I don't know why I ran. Probably because I was going to catch a delivery charge." *Washington v S*, 326<2>302 (2010)

In conv for delivery of cocaine evid was legally suff to corroborate under 38.141 by testimony of narcotics investigator who searched paid informant and his vehicle before arranged meeting to determine there were no illegal drugs or contraband on him; informant also wore a transmitter to tape the conversation between those involved in transaction; investigator was able to identify def coming out of house and approaching informant's vehicle; recording indicated exchange of a substance for \$400; one of voices on tape was identified as def's; after transaction informant delivered to officer substance later identified as cocaine. *Dennis v S*, 151<7>745 (2004)

Evid was suff to prove constructive transfer of cocaine, which occurred when def instructed undercover officer as to its location. Undercover agent met def at an outdoor site to buy crack cocaine; when agent asked "where it was at," def pointed to a foil-wrapped package lying in the road near a tree and said "it's right there in that piece of foil." Agent retrieved the package and haggled with def over the price; def was paid \$480 for the cocaine. No merit to contention evid was insuff to prove constructive transfer because it showed actual transfer; sometimes both types of transfers can occur in the same transaction; instant case was one of those times. *Sims v S*, 117/267 (2003)

In conv for delivery of over 4 grams of cocaine, evid was legally suff to prove single delivery of over 4 grams. No merit to claim evid showed two separate deliveries of less than 4 grams each. While def may have actually made two trips to deliver the cocaine, they were made within a matter of minutes to fulfill a single purchase to a single buyer. After first delivery, buyer told def the amount def brought was insuff for amount he had purchased, and def then returned to house and brought additional amount to buyer. *Jackson v S*, 87<11>677 (2002)

In conv for delivery of cocaine by offer to sell evid was legally and factually suff to prove def actually intended to sell cocaine, where X and buyer both testified def offered to sell buyer \$20 worth of cocaine, def testified they paid her \$40 for cocaine and marihuana, and all testified she took the money. Fact she testified she never intended to actually sell cocaine and only intended to steal the money, did not render evid insuff; credibility was for jury to resolve. *Knight v S*, 91<10>418 (2002)

In conv for delivery of cocaine evid was legally suff, over contention undercover officer (X) did not see an actual transfer between def and Y. Circ evid was suff where X told Y he wanted to buy cocaine; Y got in X's truck and drove to location where def was sitting in car; X gave money to Y who went to def's car and spoke to him a short while; Y returned and told X to drive to another location to complete sale; X drove there and def followed in his car; a that location Y went to def's car and got in, X observed them appear to make an exchange, and Y returned to X's truck with cocaine; def then walked to X's window and told him the cocaine was "good" and gave X his pager number and told him to call when he needed more cocaine. *Knotts v S*, 61<14>112 (2001)

In conv for delivery of cocaine, evid was factually suff. Testimony of witness for def did not carry much weight because he and def were friends and business associates, and witness had nothing to lose by testifying for def because he had already been convicted for his role in instant offense. Fact that officer's police report omitted certain statements and facts did not render evid insuff, where he explained report was compilation of his field notes from that day and not an exact diary of what happened. Although some of omissions were material, court was not convinced they indicated a lack of foundation for state's case. *Allen v S*, 39<1>428 (2001)

In convs for delivery of cocaine and poss of cocaine with intent to deliver, evid was legally and factually suff where evid showed (1) def spoke with X after viewing money in trunk of officer's trunk, (2) def then used a payphone to call someone, hung up and then immediately received another call, (3) 15 to 20 minutes later Y arrived with kilo of cocaine, (4) def, X and Y talked together, then went to officer's car, where def asked officer if he had the money, (5) when officer responded he wanted to see the cocaine, def signaled Y to weigh the cocaine, as requested by officer, and Y complied, (6) when cocaine was placed on scale, Y cut the package so the cocaine was visible. Def's actions were suff to create a reasonable inference that def knew of cocaine's existence and exercised control over it. *Avila v S*, 15<14>568 (2000)

In conv for delivery of cocaine, evid was suff where buyer testified that he saw def give package to def's brother who then gave same package to buyer, and tests showed the package was cocaine. *Hart v S*, 15<6>117 (2000)

In conv for delivery of cocaine evid was factually suff where def relied on officers' testimony on cross examination that they could not be absolutely certain that the packets were the same ones purchased from def or recall other details about the events of the day. Evid was legally suff where officers testified def sold drugs to officer of his own free will and lab supervisor testified that packets contained cocaine. *Silva v S*, 989<4>64 (1998)

In conv for delivery of cocaine evid was legally and factually suff to prove cocaine weighed at least 400 grams where chemist testified one package weighed 1121 grams and other weighed 1126 grams, including wrappers, and did not testify to weight of wrappers, but did testify to conclusion that both packages contained a controlled substance weighing more than 400 grams; and officer testified that suspects had offered to sell him two kilograms of cocaine, and second officer testified "the drug bust had two kilos." No merit to challenge to proof on claim chemist did not prove weight of wrappers. *Rodriguez v S*, 970<14>66 (1998)

In conv for delivery of cocaine evid was not insuff for failure to produce cocaine at trial, or present certain other evid. Deficiencies asserted by def were not significant enough to render evid insuff. *Velasquez v S*, 941<13>303 (1997)

In conv for delivery of cocaine evid was suff where informant-buyer and officer who took cocaine from buyer testified, and jury heard tape recording made by buyer during transaction. *Garner v S*, 939<2>802 (1997)

In conv for delivery of controlled substances evid was suff, over contention that officer-buyer's actions were a concurrent cause and but for officer's "persistent" calling and his arranging the transactions, no offense would have occurred. Evid showed offenses would not have occurred had def not been willing to locate the drugs for officer-buyer. *Hernandez v S*, 938<10>503 (1997)

Evid was suff where def made face-to-face hand-to-hand delivery of cocaine to officer and was arrested minutes later

when he attempted to flee, and was identified by officer at trial. Bailey v S, 848<1>321.

Evid was suff to prove def delivered cocaine where officer asked X if he had a "ten" referring to \$10 worth of crack cocaine, X took \$10 bill from officer and went on his bicycle to car and gave marked money to def who appeared to pour something into X's hand, X returned to officer with his hand cupped and gave cocaine to officer; X never put his hands in his pockets or picked anything up off the ground, and was only 5 to 10 seconds between time X dealt with def until X handed cocaine to officer. Williams v S, 826<14>783.

In conv for delivery of controlled substance evid was suff where def arrived on scene of transaction representing owner of drug, after viewing "flash" money def left and promised to return with drugs, when owner of drug wanted to change location def told buyers, and when buyers expressed concern over change in plans def encouraged them to stay and consummate deal. Ruiz v S, 766<14>324.

In pros for delivery of controlled substance, evid was suff where undercover officer testified to delivery and chemist testified to identity of substance. Powers v S, 838<4>53.

In conv for delivery of cocaine, evid was suff to prove def knew substance he delivered was cocaine where delivery was made in def's apartment at his dinner table, def poured some rocks of crack cocaine on table and pushed them toward buyer, buyer complained that he thought they were too small, def gave him a chip of a rock, and buyer gave def \$40, the going rate for two rocks of cocaine. Buyer made comments to def about carrying crack cocaine in a glass of ice in case he was stopped by police because it is not water soluble. Brown v S, 925<12>1 (1994)

In conv for delivery of controlled substance evid was suff where defense witness was contradicted by testimony of buyer identifying def as seller. Chase v S, 706<13>717.

In pros for delivery of less than 200 grams of pentazocine evid was not insuff for failure to prove the weight of the substance, which was not required to be proved. Marks v S, 721<9>401.

Evid was not insuff to prove delivery for failure to introduce the marked \$20 bill used in the transaction. Coleman v S, 794<1>926.

In conv for delivery of controlled substance, evid was legally and factually suff to prove delivery by actual transfer where def was alleged to have delivered substance to X, a police informant; X testified at trial that def delivered substance to him; and officer testified he drove X to house where transaction occurred, gave X money to make buy, did pat-down search of X before X entered house, saw def exit house and meet X, X followed def into house, and 2 or 3 minutes later X left house with drugs. Fletcher v S, 39<6>274 (2001)

In conv for delivery of cocaine to a minor, evid was legally and factually suff to prove delivery by actual transfer where def placed cocaine on a flat surface, from which c/w inhaled it. No merit to contention this was not a manual transfer. Def manually placed it within c/w's reach. She took possession of it by inhaling it, thereby completing the delivery. Rodriguez v S, 31<3>772 (2000)

In conv for delivery of cocaine, evid was suff to prove actual delivery where def placed cocaine in another room where it sat for several minutes before buyer took possession of it. Fact it was placed in another room did not mean def did not actually transfer it to buyer; def did not use a means other than himself, such as postal service, to deliver it; nor did he deliver it through a third person not an agent of the transferee. An actual transfer does not require that seller manually place the contraband in hands of buyer. Warren v S, 15<6>168 (2000)

Evid was legally and factually suff to prove actual delivery of cocaine where evid showed (1) def was standing guard over cocaine and indicated to buyer that it was under a jacket on table, (2) when buyer lifted jacket and saw a shoebox, def told him "it's in the box," (3) buyer lifted a package from the box, cut the package and examined the cocaine in def's presence, (4) buyer told def and other suspects he was going to get the money and would "be right back," and (5) def told buyer he could not leave because he might return with a gun and rob them of the cocaine. The delivery was an actual transfer of the cocaine by "nothing more than making" the cocaine "available to" buyer. Even though def did not pick up the shoe box and hand it to buyer, he was in control of the transaction (standing guard) and effected the transfer by telling buyer it was in the shoe box. The actual transfer occurred when buyer picked up the cocaine package after def had directed buyer to the shoe box that contained the cocaine. Rodriguez v S, 970<14>66

Evid was suff to link def to cocaine where def asked buyer for money, buyer gave def \$10 bill, and then def told other man with him to give buyer \$10 rock of cocaine. Williams v S, 830<14>303.

Evid was suff to prove def knew substance was cocaine where def brought cocaine into shop hidden under his jacket, which tended to show he knew illegal nature of substance, and def was present when price of \$37,000 to \$38,000 was discussed, and when co-def snorted some of the substance. Ramirez v S, 822<1>240.

In pros for delivery of cocaine evid was suff to prove def knew substance in aluminum foil wrappers he delivered was cocaine, where he responded to request to buy "rock" in way that indicated he knew what was being asked for, he stated the price, and he brought the cocaine wrapped in foil with buyer's change; and he asked if the buyer and companion were police officers, indicating knowledge the foil contained contraband. Clark v S, 777<9>723.

Evid was suff to corroborate accomplice witness in delivery of cocaine case, where accomplice witness was go-between in the sale, buyer at one point talked to def on phone about the deal, def was near scene of delivery observing it, and he fled scene when officers closed in to make arrests; and notes recovered where def was staying matched money calculations for negotiations in deal. Mitchell v S, 780<14>862.

Evid was suff to prove def delivered heroin to c/w, where two packages were delivered, one from seller to c/w after def arranged meeting between the two for purpose of the sale, which was suff to prove guilt as a party, and other was taken by def who went to house and used some of the heroin and then returned and gave container to c/w, so evid showed def exercised dominion and control over the heroin before the latter transfer took place. Wright v S, 749<3>935.

Evid was not insuff to convict def on indictment for actual delivery even though was no evid def handled the drugs or physically made the transfer, where he was convicted under law of parties. Jimenez v S, 739<13>499.

(1998)

In conv for delivery of cocaine, evid was suff to prove actual delivery where p/o testified to events including def personally handing cocaine to p/o, and defense witness gave conflicting story. Whitaker v S, 909<14>259 (1995)

Evid was suff to prove actual delivery from def to X even though cocaine was handed by def to Y who then gave it to X, where evid was suff to show Y acted as agent for X in the transaction; state did not need to rely on law of parties to prove actual delivery from def to X. Cohea v S, 845<1>448.

In conv for delivery of less than one-fourth ounce of marihuana for remuneration, evid was suff to prove actual delivery where def put marihuana on a fence post 20 feet from X while X watched, two or three minutes later X retrieved the marihuana. Fact the marihuana was momentarily on the fence post did not negate fact it went directly to X without an intervening agent. No merit to contention evid showed constructive delivery instead of actual delivery. Stolz v S, 962<1>81 (1997)

Evid was suff to prove actual delivery even though def was arrested before buyer took possession of the drugs; the timing of the buyer's possession viz-a-viz def's arrest is not controlling. Valladares v S, 800<6>274.

Evid was not insuff to prove actual delivery instead of constructive delivery, where was bench trial and is presumed trial court applied correct law, and trial court could apply law of parties to convict for actual delivery on proof of constructive delivery. Wallace v S, 770<5>874.

Evid was suff to prove actual transfer of marihuana where charge on law of parties was given and co-def slid bag of marihuana over to buyer who took the bag and tore it open; he then had real poss and control regardless of whether def or co-def subsequently refused to allow buyer to remove the bag. Nevarez v S, 767/766.

Evid was suff to support conv for delivery by actual transfer of controlled substance, where def handed bag of cocaine to c/w who inspected it and returned it to def before leaving to get money, and def was arrested before deal was completed; actual transfer means to cause something to pass from one person to another. Caraballo v S, 706<14>773.

EVID SUFF
ACTUAL
TRANSFER

In pros for delivery of marihuana, evid was suff to prove actual delivery, as alleged, where detective testified there was a direct transfer from occupants of van to occupant of house, and all three men touched the bags containing marihuana and appeared to be helping one another. Phillips v S, 704<9>557.

In conv for delivery of controlled substance, evid was suff to prove actual transfer where def accepted money and 10 minutes later returned with cigarette package and transferred package to undercover buyer; evid was not insuff on def's testimony package contained only cigarettes where other evid showed it contained LSD; evid not insuff for short duration of possession by buyer, where def set package on table, buyer picked it up momentarily and replaced in on table, and def then knocked it off table; transfer was complete as soon as buyer

accepted the package. Endsley v S, 702<1>307.

Evid was suff to prove actual transfer from def to c/w where evid showed actual transfer was to X and showed X was agent or representative of c/w; lack of charge on agency did not render evid insuff. Heberling v S, 834/350.

Evid was suff to conv def for actual delivery where def was present, cocaine was in plain view, def responded to buyer's request for drugs by directing him to rocks on table and dictated terms of transaction, i.e., exchanging money for one of the rocks; even though def did not pick up the rock and hand it to buyer, def was in control of the transaction and effected an actual transfer of the rock to buyer. Wartel v S, 830<1>757.

**EVID SUFF
CONSTRUCTV
TRANSFER**

In conv for delivery of controlled substance by constructive delivery evid was suff to prove guilt under law of parties where evid showed (1) X was guilty as primary actor for the constructive delivery: X and Y planned transaction, X exercised control over drugs and voluntarily relinquished them to Y, Y acted at X's direction when delivering drugs to buyer, X knew that buyer, not Y was final transferee, and (2) def was party to constructive transfer by X: def transported X to scene of transfer in aid of the transaction, def watched the transfers at close hand, when def and Z left in def's car while Y told buyer that "they" referring to def and Z were "going to get the drugs," def returned to scene with X who had not been there before, upon their arrival Y approached car and spoke to both def and X whereupon def drove away with X still his passenger, then def and X returned to scene and Y entered his car and again spoke to def and X, then def parked very close to buyer's car, Y entered buyer's car and delivered drugs then left scene with def and X. Hayes v S, 265<1>673 (2008)

In conv for delivery by constructive transfer evid was legally suff to prove constructive transfer under law of parties where undercover officer and informant visited def, X and Y at trailer where the three resided; it appeared they were trying to dry methamphetamine in oven; Y and informant went to back of trailer to negotiate; buyers were instructed to go to informant's residence where delivery would take place; def drove X and Y to informant's house and sat with officer while Y went in back with informant; officer placed money on table; when Y and informant returned Y picked up the money and placed the methamphetamine on the table; in def's presence Y explained how to cut the drugs with baby laxative to increase its volume; they left after about 5 minutes with def driving again. Evid showed a voluntary relinquishment of possession and control by Y followed by assumption of possession and control by undercover officer; Y's actions were a constructive transfer, and officer's actions completed an actual transfer; def was criminally responsible for Y's conduct under law of parties. Donley v S, 140<9>428 (2004)

In conv for delivery of cocaine by constructive transfer, evid was legally and factually suff to prove a delivery occurred, where evid showed X entered apartment and returned to Y with drug sample for Y, X then returned to apartment with large sum of money and returned to Y with large quantity of cocaine and without \$10,000 of money he went in with; officers entered apartment and found white powder, razor blade and digital scales in master bedroom, def in adjacent bathroom face down near a toilet that had cocaine on seat and on floor around it, and no one was in bedroom. Gutierrez v S, 71<7>372 (2001)

In conv for delivery of marihuana evid was legally and factually suff to prove constructive delivery from def to X, where evid showed def gave marihuana to Y who gave it to X; prior to delivery, def as transferor had direct control of marihuana; X arrived at house and def knew X was there to buy cocaine; def told X that Y would be back soon; when X and Y were in house discussing sale, def, on Y's request, tossed Y baggie of marihuana which Y then handed to X, in def's presence, in exchange for money. Evid was suff to show that def transferred marihuana to Y knowing Y would then complete sale and deliver marihuana to X. Jackson v S, 84<1>742 (2002)

In conv for constructive transfer of cocaine, no merit to contention evid proved an actual transfer, not a constructive transfer, where circ evid showed def placed cocaine package at location from where it as retrieved and that he knew what it contained. When buyer (X) and intermediary (Y), who had arranged deal, arrived at prearranged site for transaction and asked def "where it was at," def pointed to a foil-wrapped package lying in the road near a tree and said, "it's right there in that piece of foil," and X retrieved the package, which contained cocaine. Def and X then haggled over the price and X complained that the amount of drugs was less than agreed. X

tried to hand money to def, who refused and had X hand money to Y who then pitched it to def who was sitting in his vehicle. Some of money scattered, landing on hood of def's car, and as X and Y drove away X saw def exit his car and retrieve scattered money. Sims v S, 82<10>730 (2002)

In conv for delivery of cocaine by constructive transfer, evid was legally and factually suff to link def to cocaine, where evid showed X entered apartment and returned to Y with drug sample for Y, X then returned to apartment with large sum of money and returned to Y with large quantity of cocaine and without \$10,000 of money he went in with; officers entered apartment and found white powder, razor blade and digital scales in master bedroom, def in adjacent bathroom face down near a toilet that had cocaine on seat and on floor around it, and no one was in bedroom. Gutierrez v S, 71<7>372 (2001)

In conv for delivery of cocaine by constructive transfer, evid was legally and factually suff to prove def had knowledge of ultimate transfer of cocaine, where evid showed X entered apartment and returned to Y with drug sample for Y, X then returned to apartment with large sum of money and returned to Y with large quantity of cocaine and without \$10,000 of money he went in with; officers entered apartment and found white powder, razor blade and digital scales in master bedroom, def in adjacent bathroom face down near a toilet that had cocaine on seat and on floor around it, and no one was in bedroom. Jury could infer def knew cocaine was to be transferred by X to a third party. Gutierrez v S, 71<7>372 (2001)

Evid was suff to support conviction for either constructive delivery or offer to sell, where def constructively transferred marihuana to c/w when he took c/w's vehicle, loaded it with marihuana and returned the keys to c/w; the evid also showed def offered to sell marihuana to c/w and that def's offer was corroborated by def's actual poss and attempted delivery of marihuana in an amount approximately equal to the amount def offered to sell c/w; the offer was further corroborated by another undercover officer who testified that when def, def's partner and c/w approached him at the convenience store, def informed him he had 44 pounds of "good quality smoke" and that there were 25 still remaining at the house; although the second undercover agent was planned ultimate buyer, he was not an offeree under CSA where the offer was negotiated between def and c/w. Pena v S, 776<13>746.

Evid was suff to prove constructive delivery of cocaine by def to c/w, where X took c/w to location where def and others were found, X took c/w there for specific purpose of obtaining drugs for c/w; c/w was standing nearby when transfer between def and X took place and X delivered the drugs to c/w immediately upon receiving them from def; so def had direct control of cocaine prior to delivery to c/w and it is reasonable inference def knew cocaine was being obtained for c/w; contention evid only showed delivery from def to X, without merit. Jordan v S, 852<14>689.

In pros for constructive transfer to X, evid was suff to prove allegation of transfer to X, over contention was no evid def knew of existence of X, where Y went to def's vehicle and def was observed handing something to Y, Y went to occupied undercover vehicle where he handed the substance to X and received payment, and Y then delivered payment to def, who remained for duration of the transaction. Wyatt v S, 951<14>144 (1997)

Evid was suff to prove constructive delivery, where def handed object to intermediary who then gave drugs in plastic bag to undercover buyers, and then def and buyers went into def's bedroom and discussed weight of amount and negotiated price; conversation showed def's role in transaction and demonstrated his control over substance and awareness of the ultimate transfer. Harvey v S, 847<6>365.

Evid was suff to prove constructive delivery where def handed cocaine to X who handed it to Y who handed it to alleged buyer; even though no witness actually saw def hand it to X; Y testified there was no cocaine at apartment shared by X and Y before def arrived, X had \$1600 when he went outside with def and when he came back in he did not have the money but had the cocaine; and Y testified to setting up deal; and testimony of undercover buyers who were present inside apartment was suff to corroborate accomplice witness testimony of Y. *Atuesta v S*, 788<1>382.

Evid was suff to prove constructive delivery where def arranged for an agent to place cocaine under driver's seat in car at a specific location and directed buyer, the transferee, to it. *Escobar v S*, 773<1>59.

Evid was suff to prove constructive delivery where def guided buyer to location of drugs, invited him to "check it out," instructed buyer on where to put money and where to get drugs after money was placed as instructed, and other conduct in opinion. *Elliott v S*, 766<6>361.

Evid was suff to prove constructive delivery of marihuana where def was driver of car and participated in conversation about the transaction during transaction, although def's brother actually carried and handed over the marihuana delivered. *Childs v S*, 762<4>741.

In pros for delivery of cocaine evid was suff to prove constructive delivery where def was present with a woman conducting a sale when c/w arrived, indicating def had indirect control of the cocaine, and def took the money from c/w when c/w requested a "rock" of cocaine, showing def knew who the ultimate transferee of the cocaine was. *Stafford v S*, 758<1>663.

In pros for delivery of cocaine, evid was suff to prove constructive transfer where def had direct control over the cocaine before delivery and he knew of buyer's existence; def asked buyer what he wanted to buy and accepted the initial fifty dollars directly from buyer; when he returned with the cocaine, def instructed X to give the cocaine to buyer, and then asked buyer if the cocaine looked good and demanded the remaining

fifty dollars from him. *Roberts v S*, 866<1>773 (1993)

In pros for delivery by constructive transfer evid was suff where def was already in house where scale and spoon were present; when buyer asked to see the cocaine, def produced the bag that held it and handed it to co-def; and statement of another co-def introduced in rebuttal showed admission by co-def that the three committed the offense together; jury could have inferred def either owned or controlled the cocaine that was passed from def to co-def to buyer. *Rasco v S*, 739<14>437.

In pros for delivery of controlled substance evid was suff to prove constructive delivery, where def collected from c/w the purchase price, drove c/w to the location of the delivery, gave very explicit instructions to c/w regarding the actual delivery, informed c/w of the character of the package in which it was delivered, told c/w not to accept delivery if the marks across seal on the package were absent or if seal had been disturbed, and told c/w to examine the substance when he did receive it and if he was no happy to say so when def phoned him after the delivery. *Reed v S*, 733<12>556.

Evid was suff to prove constructive transfer from def to alleged buyer, where def had actual care, custody, and control of cocaine before he gave it to X with specific instructions to transfer it to alleged buyer, and that def contemplated his transfer to X was not final transaction in distribution chain since he expected to be paid when buyer paid X; def dealt with buyer specifically for purchase of cocaine and directed buyer to where cocaine could be found [and additional facts in opinion]. *Wallis v S*, 830<9>674.

Evid was suff to prove constructive transfer element that def had either direct or indirect control of drug transferred, where def gave hand and head gesture to buyer indicating he was selling drugs, after buyer said he wanted "a twenty" def directed him to park his car, asked def what he wanted, returned to group, spoke with a juvenile, and accompanied juvenile to buyer's car, and def remained just inside car's door during entire transaction; evid showed juvenile acted under def's direction and he was aware of the transferee. *Swinney v S*, 828<1>254.

Evid was suff to support delivery by offer to sell where def told undercover agent that he had a kilo of cocaine to sell and asked agent to front him half the money so he could get it and bring it back to agent. Jury could reject def's testimony that he never intended to deliver cocaine and was simply trying to steal money from the agent. *Hernandez v S*, 956<6>699 (1997)

In conv for delivery of controlled substance by offer to sell, evid was suff to prove def offered to sell cocaine, over contention "offer to sell" should be given technical meaning under law of contracts. Evid also was not insuff for failure to show def specifically stated he had "cocaine" to sell; when delivery is by an offer to sell, no transfer need take place; all needed is that an offer was made either by words or deed which would indicate def intended to sell a controlled substance. Evid was suff where undercover officer asked whether def had two \$20 pieces of crack cocaine for sale and def answered that he did not have any but he knew where some was. Def represented he would get some at a different location if buyer would drive him to other location, which represented he had cocaine to sell. *Francis v S*, 890<7>510 (1994)

Evid was suff to prove delivery by offer to sell where def arrived at scene of arranged cocaine sale and made offer to sell two kilos of cocaine for stated price of \$37,000 or \$38,000; delivery by offer was complete as soon as def made offer. *Jimenez v S*, 838<1>661.

In conv for delivery of cocaine in a drug-free zone, evidence was sufficient to corroborate accomplice witness. Confidential informant X was wearing a "wire" and was to make a drug buy from Y. X and Y met at a local store and together drove to a roadside rendezvous point, where a person in a gold Chevrolet suburban met them. Y went to the passenger side of the suburban, and the occupant gave her a single bag containing the cocaine. X and Y returned to X's home and police met them there. Y, the accomplice, gave authorities the cocaine and identified def as the driver of the suburban. When police stopped the suburban, its driver got out and escaped. The suburban was registered to def and his wife Z. The officer who stopped the vehicle said its driver met the general physical description of def but he could not positively identify him. A cell phone recovered in the suburban was owned by def's wife. The cell phone memory indicated several calls received from Y's cell phone and several text messages matching text messages on Y's phone. The text messages* provided some evidence that Y

Evid was suff to prove delivery by offer to sell of over 400 grams cocaine even though def actually transferred less than 28 grams. *Iniguez v S*, 835<1>167.

EVID SUF
OFFER
TO SELL

Evid was suff to prove delivery by offer to sell where the drug itself was introduced in evid. *Williams v S*, 830<14>303.

Evid was suff to prove delivery by offer to sell, where def represented that he could supply eight kilos of cocaine; fact it later turned out to be 6.48 grams of cocaine and the rest flour was irrelevant. *Vivanco v S*, 825<14>187.

Evid was suff to support conviction for either constructive delivery or offer to sell, where def constructively transferred marihuana to c/w when he took c/w's vehicle, loaded it with marihuana and returned the keys to c/w; the evid also showed def offered to sell marihuana to c/w and that def's offer was corroborated by def's actual poss and attempted delivery of marihuana in an amount approximately equal to the amount def offered to sell c/w; the offer was further corroborated by another undercover officer who testified that when def, def's partner and c/w approached him at the convenience store, def informed him he had 44 pounds of "good quality smoke" and that there were 25 still remaining at the house; although the second undercover agent was planned ultimate buyer, he was not an offeree under CSA where the offer was negotiated between def and c/w. *Pena v S*, 776<13>746.

was to obtain the drugs from the person she was meeting who was in the suburban and who was using def's wife's phone to communicate. The person using that phone identified himself by a street name used by def. *Alexander v S*, 282<6>143 (2009)

EVID SUF
TO CORROB

In convs for three instances for delivery of cocaine, in which def delivered cocaine to three accomplice witnesses who in turned delivered cocaine to paid police informant, evid was suff to corroborate accomplices under 38.14 and to corroborate informant under 38.141, based on audio recordings of the transactions between each accomplice and informant; def's voice was confirmed on recordings prior to two of the transactions; and law enforcement officers who monitored informant's activities on all three instances testified they secured crack cocaine from informant's possession immediately after the transactions that, according to the recordings, were completed in def's home, and those officers could independently verify the transactions occurred at or near def's home. *Patterson v S*, 204<13>852 (2006)

In convs on two counts of delivery of cocaine, separated by one week, evid was legally suff to corroborate covert witness under 38.141 as to second transaction where: def was present at scene; when arrested day after transaction def possessed three \$20 bills with serial numbers matching those given to covert witness to make purchase, and videotape of transaction include conversation* referring to a prior transaction; as to first transaction where: although no matching bills from that

transaction were found in def's possession at time of arrest over a week later, def was at scene of transaction and def's statement* in recorded conversation during second transaction referred to a prior transaction, and during first transaction def entered his house and returned with something in his hand. Brown v S, 159<6>703 (2004)

IN CONVICTION FOR DELIVERY OF A CONTROLLED SUBSTANCE EVIDENCE WAS SUFFICIENT TO PROVE DEFENDANT'S GUILT AS A PARTY WHERE THE EVIDENCE SHOWED:

: (1) X was guilty as primary actor for the constructive delivery: X and Y planned transaction, X exercised control over drugs and voluntarily relinquished them to Y, Y acted at X's direction when delivering drugs to buyer, X knew that buyer, not Y was final transferee, and (2) def was party to constructive transfer by X: def transported X to scene of transfer in aid of the transaction, def watched the transfers at close hand, when def and Z left in def's car while Y told buyer that "they" referring to def and Z were "going to get the drugs," def returned to scene with X who had not been there before, upon their arrival Y approached car and spoke to both def and X whereupon def drove away with X still his passenger, then def and X returned to scene and Y entered his car and again spoke to def and X, then def parked very close to buyer's car, Y entered buyer's car and delivered drugs then left scene with def and X. Hayes v S, 265<1>673 (2008)

: def drove X to drug sale, acted as lookout during negotiation of sale, and received proceeds from the sale. Gordon v S, 260<6>205 (2008)

: confidential informant testified that she talked to def shortly after arriving at residence, that def spoke with informant about cocaine, that she told def she wanted to buy \$170 worth, and that def said something like "talk to Robert." All that was required was that def aided Robert in some way in transferring the cocaine to informant. No merit to contention that evid did not prove she delivered more than one gram because she did not negotiate quantity and price to consummation, so no inference could be drawn that she knew Robert would sell more than one gram of cocaine to informant. Under law of parties def did not need to have same intent or knowledge as required of Robert. (legally and factually suff) Cano v S, 3<13>99 (1999)

: actual delivery under law of parties, over contention was no evid def acted with intent that the cocaine ultimately be delivered to undercover officer. Even though evid suggested X was working as an agent for undercover officer, and was no evid that def knew X or that X was in any way working on behalf of def, and was no evid def was aware of undercover officer or that officer was real purchaser of the drugs, under stare decisis, court was required to find evid suff. Marable v S, 990<6>421 (1999)

: actual delivery under law of parties, over contention was no evid def acted with intent to promote or assist X in delivery of controlled substance to undercover officer, or that X was acting as an agent, employee or at direction of def. Even though evid suggested X was working as an agent for undercover officer, and was no evid that def knew X or that X was in any way working on behalf of def, and was no evid def was aware of undercover officer or that officer was real purchaser of the drugs, under stare decisis, court was required to find evid suff. Marable v S, 990<6>421 (1999)

: guilt as party to actual delivery, over contention evid was insuff because buyer did not actually see cocaine as it was passed from def to intermediary who then gave it to buyer. Royal v S, 944<6>33 (1997)

: officer-buyer testified that despite def's initial hesitance to sell cocaine, def did assure officer that he could get cocaine for him, def set the price during their phone conversation, def instructed officer to come to def's house where def would have the cocaine, and when officer arrived at def's house he saw def inside the house and only minutes later def's brother came out of house and handed officer two packets of cocaine; and def admitted to knowing someone who sold cocaine and to arranging for officer to meet such person (factually suff). Hernandez v S, 938<10>503 (1997)

: (1) def solicited the sale of cocaine by giving his name and phone number to X and telling X to meet him at the bar, (2) def encouraged and aided the sale by introducing X to Y, and (3) def directed and aided the sale by instructing X to meet Y at the pool table. (X bought cocaine from Y at pool table.) Price v S, 911<13>129 (1995)

: def told p/o he would sell him a rock of crack cocaine if p/o would give him a "pinch" of it for his part in transaction; def then took p/o to person who had actual poss of the cocaine and told that person that p/o was a friend and wanted to purchase a rock of cocaine; in def's presence p/o purchased the cocaine and def requested the agreed upon "pinch" of cocaine. Francis v S, 909<14>158 (1995)

: actual delivery by X where def knowingly assisted in offense by obtaining a seller for officer, informed seller of officer's desire to buy drugs, and stood nearby when X sold cocaine to officer. Def's departure with X after sale is circ evid that the two were working together to complete the sale. Hubbard v S, 896<1>359 (1995)

: actual transfer; evid was suff to show def controlled the cocaine and directed X to deliver it to buyer, where def initiated contact with buyer, when buyer asked for \$20 worth of cocaine def called X over and told him of buyer's request, def stood nearby during sale and walked away with X. Hubbard v S, 896<1>359 (1995)

: def played pivotal role in enabling transaction. Only reason he was not present at time of actual transaction was change in time and location and buyer did not want to wait until def completed his workday. Def contacted a source that apparently was ready and able to provide cocaine that was eventually purchased, he gave buyer phone number allowing him to complete final arrangements, and def also required he be given a certain fee for his efforts in assisting sale. Lecrone v S, 889<14>585 (1994)

: def participated in several telephone conversations regarding the sale, he told buyer that they could do business and agreed to meet buyer at location; def drove X to station, identified himself, and asked buyer if he had the money; def was inside buyer's car when X transferred the cocaine, but only because of buyer's concern for his own safety. Cornejo v S, 871<1>752

: def arrived at residence at time X had said the cocaine would arrive; in response to buyer's query, X said he was ready to get the "stuff" and would be back soon; def and X left in def's car with def driving, and soon returned with the cocaine; def was standing by X when X handed cocaine to buyer; def and X discussed trading automatic weapons for a larger quantity of cocaine than what had just been delivered, and def agreed to discuss this with his "source." Garcia v S, 871<8>279

: undercover officer was flagged down by X and told X he wanted to buy cocaine, X entered car and directed officer to where def was standing on street, X got out and talked to def who walked over to car and bent over, def returned and handed something to X who returned to car and gave cocaine to officer; def was soon arrested and had marked bills officer had given X to buy cocaine with. Dade v S, 848<14>830.

: def handed cocaine to his brother who handed it to buyer, so def was party to actual delivery, and evid was not insuff on claim it showed constructive delivery. Bates v S, 843<6>101.

: def obtained seller for undercover buyer, informed seller of buyer's desire to buy a "twenty" and handled the money and cocaine. Becker v S, 840<1>743.

: def flagged down seller and solicited his participation by asking him where he could purchase cocaine, and suggested buyer purchase cocaine from seller; he also aided and encouraged delivery by demanding buyer pay for cocaine in advance and assured buyer that seller would not rip him off. Gonzalez v S, 838<13>770.

: def negotiated price with undercover officer, accepted money for the drugs, personally obtained the substance, then directed his wife to hand the cocaine to transferee. Santos v S, 834<9>953.

: delivery by offer to sell and offer occurred during course of four meetings involving five different people, during course of events leading to planned sale def was seen with co-def who retrieved bag similar to one recovered after arrests that contained drugs; def was at scene of planned delivery with gun,

**Sample pages continue on the next page
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In pros for DWI it was not error for trial court to admit breath test results, while excluding retrograde extrapolation evid, over contention that without retrograde extrapolation evid the breath test results were irrelevant to show def was intoxicated at time she was driving, 80 minutes before test. Her breath test results tended to make it more probable that she was intoxicated at the time she drove under either definition of intoxication because they provided evidence that she had consumed alcohol. There was no evidence that she consumed alcohol after driving. The breath test results - along with officer's testimony and videotape of def - were probative evidence of her intoxication. That the breath test results might not have been conclusive proof that she was intoxicated at the time that she drove was of no consequence. No merit to contention admission of breath test results invited jury to conduct its own crude retrograde extrapolation; the breath test results were pieces in the evidentiary puzzle for the jury to consider in determining whether def was intoxicated at the time she drove, and the jury had other evidence to decide that issue; the admission of the breath test results did not necessarily encourage the jury to engage in its own crude retrograde extrapolation because the jury did not need to establish def's exact blood alcohol concentration at the time that she drove. The jury only needed

to believe beyond a reasonable doubt that either her blood alcohol concentration was 0.10 or more, or that she failed to have the normal use of her mental or physical faculties by reason of introduction of alcohol into her body, at the time she drove. *Stewart v S*, 129/93 (2004)

In pros for intoxication manslaughter it was not error to deny motion to suppress blood test results over claim evid was unreliable because state did not use retrograde extrapolation to show BAC at time of accident by taking into account what def ate and drank before driving. Retrograde extrapolation is not required for introduction of test results; unextrapolated test results are probative evid for jury to consider. *Garcia v S*, 112<14>839 (2003)

It was not error to admit blood alcohol test results without retrograde extrapolation evid. *Torres v S*, 109<2>602 (2003)

In pros for DWI it was not error to admit intoxilyzer test results over contention state failed to provide retrograde extrapolation to relate test results back to time of alleged offense, where state offered suff evid to convict def of DWI without retrograde extrapolation. *Price v S*, 59<2>297 (2001)

BREATH TEST EVIDENCE

Sec. 724.064 Trans. Code makes admissible evidence of alcohol concentration as shown by analysis of breath specimens taken at the request or order of a peace officer. 724.016 authorizes DPS to adopt rules approving satisfactory analytical methods and requires that breath specimens be taken and analyzed by individuals who are certified by the department. Rule 702 authorizes the testimony of experts, in the form of opinion or otherwise, when scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. Harmonizing these provisions: when evidence of alcohol concentration as shown by the results of analysis of breath specimens taken at the request or order of a peace officer is offered in the trial of a DWI offense, (1) the underlying scientific theory has been determined by the legislature to be valid; (2) the technique applying the theory has been determined by the legislature to be valid when the specimen was taken and analyzed by individuals who were certified by, and were using the methods approved by DPS rules; and (3) the trial court must determine whether the technique was properly applied, in accordance with the department's rules, on the occasion in question. In such cases there will be a "gatekeeper" hearing under Rule 702 as required by *Kelly v. State*, 824/568 (1992), but the issues at hearing will be only those that have not been resolved by the legislature's decisions on reliability. If the technique was properly applied, the evidence of the result of the analysis is reliable under Rule 702. (Of course, admissibility of the evidence also depends on other factors of relevance and the counterweights in Rule 403. Other rules or laws also may apply.) Court did not decide that all evidence relating to Intoxilyzer results may be admitted by this shortened gatekeeper hearing. For example, the statutes do not address the reliability of the techniques for interpreting and extrapolating Intoxilyzer results. Therefore, expert testimony that grounds itself in such techniques is still subject to the requirement that the proponent establish, in a gatekeeper hearing, the reliability of the underlying scientific theory and the technique of its application, as well as the proper application of the technique on the particular occasion. *Beard v S* (Tx.Cr.App, 9/25/02, No. 282-00)

It may be that, in an appropriate case, a trial court could reasonably conclude that the probative value of breath test results is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. If, for example, a jury is not given adequate information with which to evaluate the probative force of breath test results, it might be that a trial court could reasonably conclude that the admission of such evidence would pose a danger of misleading the jury. Similarly, if a breath test was administered to an accused several hours after he was stopped and the results were at or below the legal limit, it might be that a trial court could reasonably conclude that the probative force of the test results was too weak to warrant admission in the face of a Rule 403 challenge. *Gigliobianco v S*, 210/637 (2006)

It is not a prerequisite to admission of breath test results that the operator himself understand the science and technology involved, so long as he is properly certified under the statute to operate it. *Rule 702 and Kelly v S*, 824 S.W.2d 568 (Tex. Crim. App. 1992), have not changed the law in this regard. *Reynolds v S*, 204/386 (2006)

In the context of breath test results, the Legislature has already determined that the underlying science is valid, and that the technique applying it is valid as long as it is administered by individuals certified by, and using methods approved by the rules of, DPS. The fact of certification is sufficient to meet the Kelly criteria with respect to the competence of the breath test operator. That the opponent of the evidence can demonstrate that the operator has not retained all of the knowledge that was required of him for certification is a circumstance that goes to the weight, not the admissibility, of the breath test results. When evidence of alcohol concentration as shown by the results of analysis of breath specimens taken at the request or order of a peace officer is offered in the trial of a DWI offense, (1) the underlying scientific theory has been determined by the legislature to be valid; (2) the technique applying the theory has been determined by the legislature to be valid when the specimen was taken and analyzed by individuals who are certified by, and were using methods approved by the rules of, DPS; and (3) the trial court must determine whether the technique was properly applied in accordance with the department's rules on the occasion in question. *Reynolds v S*, 204/386 (2006)

Under Rule 702, predicate now required for admission of intoxilyzer test results to prove intoxication is to show (1) periodic supervision over the intoxilyzer and operation by one who understands the underlying scientific theory of the intoxilyzer, and (2) proof of the intoxilyzer test result by one qualified to translate and interpret such result, so as to eliminate hearsay. *Coward v S*, 993<4>307 (1999)

The legislature, by mandating the intoxilyzer test results to be statutorily admissible, has determined the underlying scientific theory and the technique in applying the theory to be valid, reliable. *Coward v S*, 993<4>307 (1999)

67011-5 sec. 3 does not provide for blanket admissibility of evid of breath test results in DWI cases regardless of the form in which the evid is presented. The statute recognizes the scientific reliability of breath tests when performed in accordance with sec 3(b), (c). 67011-5 sec. 3 codified existing case law, and does not abrogate the hearsay rule. Cause remanded to court of appeals to determine whether challenged evid in instant case was objectionable as hearsay. *Stevenson v S*, 895/694 (1995)

Proof of statutory written warnings, which all pertain to consequences of an accused's refusal to give a specimen, is not required for admission of results of breath test voluntarily taken. *Nebes v S*, 743<1>729; *Hogue v S*, 752<12>585; *Landgraff v S*, 740<1>577.

EVIDENCE
OF BREATH
TEST

**EVIDENCE
OF BREATH
TEST:
VOLUNTARI-
NESS OF
CONSENT**

Also see notes at Sec. 724.015.

Also see notes below at BLOOD TEST on consent.

Def's consent to take breath test was not involuntary, where officer could not get a direct response from def regarding whether def would consent, officer told def he was going take def's refusal to answer as a refusal to consent, and def then said he would consent to breath test. Officer's conduct did not rise to level of psychological pressure rendering consent involuntary. *Thomas v S*, 336<1>703 (2010)

Even though a person's knowledge of the right to refuse consent is a relevant factor when determining voluntariness, it is not determinative. *Harrison v S*, 205/549 (2006)

It was not error to admit results of intoxilyzer test, over claim def did not consent to test, where def initially requested a blood test instead but agreed to a breath test. *Powers v S*, 217<11>676 (2007)

In pros for DWI it was not error to deny motion to suppress breath-test results on claim def was illegally coerced by officer to submit to breath test. Statement* of officer, that def was being detained pending outcome of test, was not coercive because it did not encompass adverse circs that would occur if def refused to submit to test. Although def testified he understood officer's statement to mean that he would be released if he passed the test and claimed he consented to test based on that understanding, trial court acted within its discretion by rejecting def's professed understanding, given officer's testimony, videotaped evid, and circs showing officer gave def correct statutory warnings before obtaining def's breath test. *Ness v S*, 152<1>759 (2004)

In pros for DWI it was not error to admit intoxilyzer test results over contention def did not freely and voluntarily submit to test, where statements* of officer and def on videotape conclusively showed def freely and voluntarily consented. *Price v S*, 59<2>297 (2001)

It was not error to deny motion to suppress intoxilyzer test results, over contention evid was factually insuff to show def voluntarily consented to test because of conflicting evid of whether officer gave def required statutory warnings before def submitted to test; at suppression hearing trial judge was judge of credibility of witnesses and must have believed officer. *Journeycake v S*, 54<1>79 (2001)

In pros for DWI it was not error to deny motion to suppress intoxilyzer test results, over contention his consent to take the test was physically coerced by the pain and discomfort of pepper spray used by officers to subdue and arrest him, where record showed paramedics permitted def to wash his face with

a saline solution shortly after he was sprayed, he was allowed to wash his face again at police station, he was given DWI statutory warnings and agreed to take the test, and was no evid def was still under effects of the spray when asked to give breath sample, or that the effects of the spray, if any, had an impact on his decision to take the test. *Arnold v S*, 971<5>588 (1998)

It was not abuse of discretion to find def voluntarily submitted to breath test, where trial court heard conflicting evid on subject. *Townsend v S*, 813<14>181.

Although a breath test cannot be taken without consent, whether it is voluntary is a question of fact for fact finder. *White v S*, 711<14>106.

Where def wanted to give blood sample instead of breath sample, insistence of p/os on a breath sample as opposed to a blood sample was not so coercive as to render taking of breath sample involuntary. *White v S*, 711<14>106.

It was not error to deny motion to suppress results of breath test on contention officer who administered test made misleading and unauthorized statements to def about his options which rendered his consent involuntary. Officer correctly informed* def about the law and his rights under the law. No merit to contention def consented on basis that he would also be able to get a blood test administered by person of def's choosing; was no evid def ever requested a blood test. *Vester v S*, 916<6>708 (1996)

It was not abuse of discretion to deny motion to suppress intoxilyzer result and videotape on claim that consent was improperly coerced by police, where testimony* showed warnings given def. *White v S*, 871<14>833

It was not error to deny motion to suppress results of breath test, over contentions he was not given proper warning under sec. 2(b) and consent was not voluntary, where undisputed evid showed def was given non-conforming warning on way to police station, but at station he was read his rights under sec. 2(b) and consented to test. *Ewerokoh v S*, 835<3>796.

No merit to claim breath test results should have been excluded because def's consent was invalid; there is no constitutionally protected right to refuse consent. *Reynolds v S*, 822<14>341.

It was not error to deny motion to suppress results of breath test over contention it was coerced, where def was asked to take breath test, he asked for blood test and was told a blood test was not available at that time, and was again asked to take a breath test and informed a refusal could and would be used against him. *White v S*, 711<14>106.

**BREATH
EVIDENCE
ADMISSIBLE
equipment**

Also see notes above at topic EVIDENCE: equipment.

It was not error to admit breath test results over objections that witness did not review number of times equipment had been repaired and that equipment was out of warranty. Witness testified equipment was operating properly at time test was conducted; lack of testimony about warranty and repair work did not require exclusion. *Thomas v S*, 336<1>703 (2010)

It was not error to admit breath test results over contention state failed to prove surge protector was proper type, where record failed to show certification of surge protector was required; and if required, evid showed possible failings of surge protector would not affect validity of test results. *Reynolds v S*, 822<14>341.

**BREATH
EVIDENCE
ADMISSIBLE
underlying
scientific
theory**

Also see notes above at topic EVIDENCE: equipment.

No merit to challenge to admission of intoxilyzer test results under Rule 702 for failure to show underlying theory was valid and the technique for applying underlying theory was valid. Legislature has recognized validity of theory and technique behind intoxilyzer. The only open issue is whether the technique was properly applied in instant case. *Henderson v S*, 14<3>409 (2000)

It was not abuse of discretion to admit evid of intoxilyzer test results without proof that scientific theory underlying machine was reliable, because legislature has determined such test results are admissible when performed in accordance with Transportation Code and DPS regulations. *Scherl v S*, 7<6>650 (1999)

In pros for DWI it was not error to admit intoxilyzer test results, over contention state did not prove reliability and validity of the underlying scientific theory to support its modification of intoxilyzer. The state need not establish an underlying scientific

theory to support modification of the intoxilyzer in order to admit evid of test results. The state need only support admission by proving the intoxilyzer was periodically inspected, was operated properly, and the test result was interpreted by one qualified to do so. No merit to def's contention that state's modification of intoxilyzer dispelled its validity and accuracy, where state proved it passed simulated tests after its modification. State proved intoxilyzer was periodically monitored to ensure its accuracy; it was inspected prior to def's test and proven to be operating properly; and a simulated test of the intoxilyzer administered immediately prior to def's test ensured its accuracy. This proof revealed that any modification to the intoxilyzer did not compromise its accuracy and validity, and the modification did not prevent admission of the test results. *Coward v S*, 993<4>307 (1999)

It was not error to admit results of intoxilyzer test over objection the reference simulator had not been individually certified, because DPS regulations do not require the reference simulator to be individually certified. *Schultz v S*, 725<1>411.

It was not error to admit results of intoxilyzer test over objection the reference simulator was not certified individually, because regulations* for certification of equipment do not require individual certification of allied equipment, but only require certification by class, and witness testified the reference simulator was considered allied equipment, was certified by type or model, and that it operated properly for the function it was designed to perform. *Harrell v S*, 725/208.

It was not error to admit results of intoxilyzer test over objection the reference simulator had not been individually certified, because DPS regulations do not require the reference simulator to be individually certified. *Schultz v S*, 725<1>411.

It was not error to admit intoxilyzer results over claim state did not show the intoxilyzer is a scientifically reliable test; state is not required to make such proof. *Shannon v S*, 800<4>896.

ADMISSIBILITY OF EVIDENCE

724.064

Also see notes above at topic EVIDENCE: equipment.

It was not error to admit breath test results over objection that testimony showed test results could be affected by various factors (paint fumes, fever, hot room, etc.) where was no evid any of those factors were present in instant case. Also, during testing process the ambient air is tested, which would have

detected paint fumes and invalidated test, but none was detected in instant case; if def had fever test results would have been increased by 0.003, and def's test results where so high that even if 0.003 were subtracted, his results would have still be 0.162; and if room had been too hot, machine would not have functioned, but it did. Thomas v S, 336<1>703 (2010)

**BREATH
EVIDENCE
ADMISSIBLE
reliability
of test**

Also see notes above at topic EVIDENCE: equipment.

In pros for intoxication assault it was not error to admit breath test results over objection state did not show proper procedures were followed when test was administered, where record showed officer was a certified intoxilyzer operator; he detailed the methodology he follows when administering a test; and technical supervisor testified officer's machine was inspected a month before def's test and again one week after that test and it was operating correctly both times. Contreras v S, 324<11>789 (2010)

It was not error to admit intoxilyzer test results over claim state failed to show scientific principles underlying operation of machine were properly applied (because officer failed to measure def's body temperature, breath temperature, and lung capacity before taking breath specimen), where officer testified at length regarding scientific theory underlying test results; his testimony that temperature can affect breath testing accuracy went to weight, not admissibility. Trillo v S, 165<4>763 (2005)

**BREATH
EVIDENCE
ADMISSIBLE
proper
testing
procedure**

It was not error to allow X to testify to results of intoxilyzer test over claim X was not qualified to testify as to mandatory 15-minute observation period, where record showed X was certified by DPS to operate intoxilyzer and he testified that he complied with the required 15-minute observation period when administering the test. He knew the protocol and testified he followed the protocol on occasion in question; he did not have to demonstrate any personal familiarity with the underlying science and technology. Bolen v S, 321<7>819 (2010)

def was retested because first test was not valid, and officer testified he waited 15 minutes between tests but time notations on test results indicated four minutes between end of first test and beginning of second test, no merit to contention officer was required to wait second 15 minutes between tests; rule does not require an additional 15-minute wait before a retest. No merit to contention def was not continuously observed by deputy because he waited on a bench outside test room between tests, where record showed def was under deputy's supervision; rule does not require direct observation; also, purpose of rule is to prevent subject from putting something in his mouth, and that was not an issue in instant case. Shpikula v S, 68<1>212 (2002)

**BREATH
EVIDENCE
ADMISSIBLE
15-minute
observat'n
period**

In pros for DWI it was not error to deny motion to suppress intoxilyzer test results. No merit to contention officer did not observe def for required time before performing test, based on times of various events in sequence from def's arrest until test was performed, where there was no showing time stamp generated by video camera was synchronized with internal clock of intoxilyzer machine, and no indication of source from which officers determined stated time of arrival at station. Howes v S, 120<6>903 (2003)

It was not error to deny motion to suppress results of breathalyzer test, on argument officer did not observe def for 15-minute period before giving test, where def never raised a fact issue on the matter; proving compliance with this requirement is not required as a predicate for the admission of the results of the breathalyzer test; compliance must be proved only if a fact issue is raised with respect to a particular requirement. Hawkins v S, 865<13>97 (1993)

It was not error to admit intoxilyzer test results where def's only specific objection to the application of the technique of analysis was that officer did not properly observe def for 15 minutes before administering test, and record supported trial court's ruling that there was no showing of a violation of regulation requiring 15-minute observation period. Beard v S (Tx.Cr.App, 9/25/02, No. 282-00)

It was not error to admit results of intoxilyzer test over contention def was not continuously observed for 15 minutes before test, as required by administrative rules* where observation was by two officers for overlapping period of time that exceeded 15 minutes; it was not necessary for a single person to observe def for continuous 15-minute period. McGinty v S, 740<1>475.

It was not error to admit breath test results over contention def was not observed 15 minutes before test, where def was in deputy's presence for 15 minutes before first test and continuously until def's breath was successfully tested. Where

In pros for intoxication manslaughter it was not error to admit intoxilyzer test results, taken about four and a half hours after accident, even though it had little or no relationship to def's alcohol concentration at time of offense, but it was relevant on issue of whether def's faculties were impaired by alcohol at time of accident by showing concentration of 0.13 at five and a half hours after def stopped drinking. This was circ evid that def had consumed a large quantity of alcohol hours before accident, which in turn was circ tending to show def did not have normal use of his mental or physical faculties at time of accident because of excessive alcohol consumption. Douthitt v S, 127<3>327 (2004)

In pros for DWI it was not error to admit intoxilyzer test results, over contention it was not relevant because witness admitted results from test administered two and a half hours after accident could not be extrapolated back to accurately measure intoxication at time of accident, where witness also testified machine was working properly and only gives a reading if alcohol is present in test subject's breath, so was relevant in establishing def had consumed alcohol prior to incident because he had no opportunity to take in any alcohol after accident. Verbois v S, 909<14>140 (1995)

**BREATH
EVIDENCE
ADMISSIBLE
relevance**

In pros for DWI it was not error to admit breath test results and overrule Rule 403 objection where trial court could have reasonably concluded (1) the inherent probative force of def's breath test results was considerable, since those test results showed that def had consumed, in the hours preceding the breath test, a substantial amount of alcohol - enough alcohol to raise his breath alcohol concentration to 0.09; (2) state's need for the breath test results was considerable, since the state's videotape - which showed def as quite lucid - tended to contradict, to some extent, officer's testimony concerning def's appearance and behavior; (3) the breath test results did not have a tendency to suggest decision on an improper basis; (4) the breath test results did not have a tendency to confuse or distract the jury from the main issues in the case; (5) the breath test results did not have any tendency to be given undue weight by the jury; and (6) it was unlikely that presentation of the breath test results would consume an inordinate amount of time or merely repeat evidence already admitted. Gigliobianco v S, 210/637 (2006)

.09 and .092 were probative of whether def had consumed alcohol before operating motor vehicle and whether he was impaired as a result of his alcohol consumption; they related directly to charged offense and amount of time state spent developing the evid was inconsequential because it could not have distracted jury from charged offense; state did not have great need for this evid in light of other evid (officer's observation of def, poor performance on field sobriety tests, videotape of def on which he admitted he had consumed alcohol). Gigliobianco v S, 179<4>136 (2005)

**BREATH
EVIDENCE
ADMISSIBLE
rule 403**

In pros for DWI it was not error to admit intoxilyzer test results over rule 403 objection, where def submitted two breath test samples about 80 minutes after he stopped driving; results of

In pros for DWI it was not error to admit intoxilyzer test results, on claim that without extrapolation evid the results were inadmissible under rule 403. Adams v S, 156<9>152 (2005)

In pros for DWI it was not error to admit intoxilyzer results. No merit to contention they should have been excluded under rule 403, where results were probative of whether def consumed alcohol before operating a motor vehicle and whether he was impaired as result of his alcohol consumption; results would not have impressed jury in some irrational but indelible way; results were proof of charged offense; amount of time spent developing the evid was inconsequential since it could not have distracted

jury from charged offense; and state's need for evid was not great in view of other evid of intoxication. Balancing factors, there was not a clear disparity between degree of prejudice and probative value of results. *Martinez v S*, 155<4>491 (2004)

It was not abuse of discretion to admit intoxilyzer test results, over contention prejudicial value outweighed any probative

value (because witness admitted results from test administered two and a half hours after accident could not be extrapolated back to accurately measure intoxication at time of accident), where it was relevant in establishing def had consumed some alcohol. *Verbois v S*, 909<14>140 (1995)

BREATH EVIDENCE ADMISSIBLE hearsay It was not error to admit intoxilyzer test results over hearsay objection. The intoxilyzer machine is not a declarant and the data it generates is not hearsay. *Henderson v S*, 14<3>409 (2000)

The intoxilyzer instrument is a computer, not a person. By definition, the intoxilyzer is not a declarant. The information in printout is not merely feedback of computer-stored data, which would be hearsay. The intoxilyzer instrument self-generates data. The information on the printout is the result of the

computer's internal operations. Because intoxilyzer is not a declarant, the data it generates is not a statement and cannot be hearsay. The fact that the same data is ultimately printed in hard copy does not convert it into hearsay. Because intoxilyzer results are not hearsay, state could properly rely on information in the printout to establish the predicate for its admission in evid. *Stevenson v S*, 920<5>342 (1996)

BREATH EVIDENCE ADMISSIBLE person who performed test Also see notes above at topic "EVIDENCE: expert" and notes at Sec. 724.016.

It was not error to rule state could admit results of breath test over objection that state could not show officer who conducted it was familiar with the science and technology that underlie the test. *Reynolds v S*, 204/386 (2006)

It was not error to admit intoxilyzer test results over objection person who administered the test did not understand its scientific theory. Person performing the test need not understand scientific theory of intoxilyzer. *Reynolds v S*,

163<7>808 (2005)

It was not error to admit results of intoxilyzer test where officer who administered the test testified he had attended a week-long certification school, passed a written exam, became a certified intoxilyzer operator, and was certified on the date alleged; testified he administered the intoxilyzer test to def according to the instructions accompanying the instrument, following each of the seven steps prescribed by the DPS; and testified the instrument was working properly and that he operated it in a proper manner. *Martin v S*, 724<2>135.

BREATH EVIDENCE ADMISSIBLE sponsoring witness It was not error to admit breath test results over objection they were admitted through the wrong witness, where officer first testified to actions he took in conducting the test as well as test results, then second witness testified to maintenance and condition of machine, and at end of testimony of second witness state offered test results into evidence. Two witnesses are commonly necessary to lay proper predicate for admission of breath test results, one to show conduct of test and one to show predicate related to machine itself, and proper predicate was laid in instant case. *Thomas v S*, 336<1>703 (2010)

It was not error to allow X to testify about intoxilyzer test results, over claim state did not designate X as an expert witness, where (1) state's failure to designate X as an expert witness did not violate a discovery order because trial court denied def's motion for discovery of expert witnesses, (2) state did disclose X as a witness pursuant to def's earlier discovery order, providing notice of its intent to call X as a witness. Also, X was

the arresting officer and operator of the intoxilyzer, so def, who challenged evid of intoxication, should have anticipated X would testify to results of breath test. If error, was harmless. *Bolen v S*, 321<7>819 (2010)

It was not error to admit intoxilyzer test results over contentions witness (a supervisor) (1) did not prepare reference sample used, so he could not testify the reference sample was properly formulated; and (2) could not testify to prior supervisor's understanding of scientific theory underlying intoxilyzer. Supervisor could rely on records of previous supervisor (who held position at time of test in instant case) as a basis for his opinion that the intoxilyzer was working properly on night def was tested, and witness had personal knowledge of prior supervisor's certification as technical supervisor. *Henderson v S*, 14<3>409 (2000)

BREATH EVIDENCE ADMISSIBLE right of confront 'n In pros for DWI it was not error to admit breath test results over claim it violated right of confrontation because technical supervisor in charge of machine at time of trial, who testified and sponsored test results and maintenance records, was not in charge of machine when def was arrested. *Settlemyre v S*, 323<2>520 (2010)

It was not violation of right of confrontation to admit evid of intoxilyzer test results without testimony of person who was

technical supervisor at time of breath test, where test results were admissible without such testimony, relying in part on testimony about content of maintenance records that was properly admitted under 803(6) for records of regularly conducted activities, a firmly rooted hearsay exception with suff indicia of reliability to satisfy the confrontation clause. *Henderson v S*, 14<3>409 (2000)

BREATH EVIDENCE ADMISSIBLE constitutional rights It was not error to deny motion to suppress results of intoxilyzer test on claim was product of illegal arrest, where def voluntarily accompanied officer from his home to scene of accident, and was not under arrest. *Salazar v S*, 773<14>34.

It was not error to admit intoxilyzer test results over contentions of violations of Miranda and Fifth Amendment rights, and of Sixth Amendment right to counsel. *Looney v S*, 745<14>927.

It was not error to admit results of breathalyzer test, over contention def's request to consult with an attorney was denied, where evid showed after the request def reinitiated the conversation with the officer, which was an intelligent and voluntary waiver of right to counsel. *Jacobs v S*, 734<5>704.

Admission of intoxilyzer test results did not violate def's rights under Fifth Amendment or Texas Constitution, where def's consent to take breath test was voluntary and knowing, and was after def was advised of his rights and permitted to telephone his attorney. *Garcia v S*, 726<14>231.

In pros for DWI it was not error to deny motion to suppress intoxilyzer test result for denial of right to counsel; def is not entitled to consult an attorney concerning whether to take breath test because it is not a testimonial communication, but instead is a preparatory step not constitutionally protected in state's gathering of evid; deemed consent under 67011-5 sec 1 is reason for considering breath test a preparatory step and not a critical stage with right to counsel. *DeMangin v S*, 700<1>329.

ERROR TO ADMIT: BREATH On appeal by state from order granting motion for new trial, it was not abuse of discretion to grant motion based on improper admission of intoxilyzer test results. The non-statutory information conveyed to def under circs was of type that would normally result in considerable psychological pressure on a DWI suspect to consent to taking of an intoxilyzer test. Was no evid in record that the non-statutory information given def had no bearing on his decision to consent. Def was told that if he passed the test he would be free to go but if he failed he would be put in jail for DWI. *S v Serrano*, 894<14>74 (1995)

It was abuse of discretion to deny motion to suppress intoxilyzer test results where def's consent was not voluntary, because officer gave him warnings not contemplated by 67011-5

concerning consequences of a refusal; the non-statutory information conveyed to def (that he would be jailed and charged with DWI) was of the type that would normally result in considerable psychological pressure upon a DWI suspect to consent to the taking of a breath sample; given the complete absence of any record evidence showing that this nonstatutory information given to def had no bearing on his decision to consent, no rational fact-finder could conclude that the state carried its burden of showing that def's consent was voluntary; def's consent to the intoxilyzer test was obtained in violation of 67011-5 sec. 2, and, therefore, the test results were inadmissible under 38.23 CCP. *Erdman v S*, 861/890 (1993)

It was error to admit results of intoxilizer test where def was incorrectly told by officer that the implied consent law applied, which was incorrect because def was found driving in circles in a parking lot. Howard v S, 744<14>640.

It was reversible error to admit testimony about invalid intoxilyzer test, where it was undisputed the test was not done in accordance with the rules of the Department of Public Safety, so a valid result was not obtained; the testimony had the effect of encouraging the jury to speculate that had a valid test been administered, def would have failed it; and the error was aggravated during jury argument. Boss v S, 778<3>594.

It was reversible error to admit results of intoxilyzer where state did not show machine functioned properly on day in question, existence of periodic supervision over machine and operation by one who understands the scientific theory of the machine, or proof of the results by a qualified witness; proof by def that no computer printout of results existed did not open door for testimony of readout observed by officer present at time; error

was not harmless where officer testified readout was no less than and probably more than .20. May v S, 784<5>494.

It was reversible error to permit p/o (over objection he was not qualified operator of intoxilizer, where he was not qualified to operate device or administer test, interpret results, was not shown to be a chemist or to have ever been instructed in analysis or preparation of chemicals for test) to testify that he had in past observed persons he had arrested take and fail the test who appeared to be less intoxicated than def did at time in question, leaving impression that if def had taken the test she would have failed. Graham v S, 710/588.

Erroneously admitted testimony of p/o implying def would have failed intoxilizer test was not harmless where two witnesses after viewing videotape could not form opinion as to whether def was intoxicated and case boiled down to a swearing match between p/o and def and def's witnesses. Graham v S, 710/588.

In pros for DWI it was abuse of discretion for trial court to suppress intoxilyzer test results under Rule 403. (1) Def's intoxilyzer results indicated he had consumed alcohol. As a result, they tend to make it more probable that he was intoxicated at the time of driving under both the per se and impairment definitions of intoxication. (2) The intoxilyzer results were undoubtedly prejudicial to def, but they were not unfairly prejudicial because the evidence related directly to the charged offense. This contested evidence did not have a great potential to impress the jury in an irrational way. (3) Because the intoxilyzer results related directly to the charged offense, a jury could not have been distracted away from the charged offense regardless of the required time to present the results. (4) In light of other evidence probative of def's intoxication, the state did not have a great need for the test results. The sum of the factors weighed in favor of admissibility; the trial court abused its discretion in suppressing the test results on Rule 403 grounds. State v Mechler, 153/435 (2005)

On appeal by state from order granting motion to suppress results of intoxilyzer test, suppression order reversed. Under delegation of authority in 67011-5 sec. 3(c), DPS has from time to time adopted, amended and repealed breath alcohol testing regulations. Under regulations* controlling in this case, a continuous or direct observation of subject prior to test is no longer required. S v Reed, 888<4>117 (1994)

It was not abuse of discretion for trial court to sustain motion to suppress breath test results where it could have reasonably concluded from video tape that def did not voluntarily consent to submit to breath test (transcript of videotape in opinion). S v Schaeffer, 839<5>113.

It was not abuse of discretion to exclude audio portion of videotape where trial court had properly excluded results of breath test, which also barred any reference to breath test, and audio track contained extensive discussion of the breath test, which was irrelevant and highly prejudicial; and audio track also contained substantial irrelevant material. S v Schaeffer, 839<5>113.

On state's appeal of order granting motion to suppress results of def's breath test, held no abuse of discretion in trial court's

If it was error to overrule objection to testimony of officer that intoxilyzer test results indicated to him that def was intoxicated, error was harmless, where state expert also testified about test results and was substantially similar to officer's testimony. Gigliobianco v S, 179<4>136 (2005)

In pros for DWI instruction to disregard was effective following objection to testimony* that preliminary breath test at scene showed alcohol concentration over .08, where test was only to

be used to show presence or absence of alcohol, not concentration. Adams v S, 156<9>152 (2005)

On appeal by state, held was error to grant motion to suppress results of intoxilyzer test on trial court finding of violation of administrative rules for administering test. Rules do not require new 15-minute observation period after intoxilyzer machine produces a "check ambient conditions" message. The observation period and the test itself are two different things. The machine does not need a 15-minute rest period. The 15-minute observation period need not be repeated, but the subject must remain under observation until the machine is ready to perform correctly. Once the machine resets or successfully retests itself, and indicates it is ready to accept the next test run, the test may be repeated. S v Moya, 877<4>504 (1994)

On appeal by state, held was error to grant motion to suppress results of intoxilyzer test on trial court finding of violation of administrative rules for administering test. Rules do not require same officer to both observe def and administer test. Rules require that an operator observe subject for at least 15 minutes before test, and that an operator administer the test to the subject who has just been observed. These functions may be done by one operator or by two. S v Melendes, 877<4>502 (1994)

It was reversible error to exclude testimony* of expert on reliability of intoxilyzer. Fultz v S, 770<14>595.

finding that def's consent to take breath test was involuntary, where def testified officer told him that if he refused to take the test he "would automatically be charged and incarcerated" and officer did not recall whether he made the statement to def; trial court was free to believe def's testimony and to find consent was involuntary. S v Sells, 798<3>865.

It was not abuse of discretion for trial judge to sustain motion to suppress results of breath test on finding that test was not administered in accord with the law, in that def was not under continuous observation for 15 minutes prior to administration of test as required by regulations adopted by DPS. S v Kost, 785<4>936.

be used to show presence or absence of alcohol, not concentration. Adams v S, 156<9>152 (2005)

If it was error to admit evid of def's breath test in pros for aggravated assault with deadly weapon, error was harmless where there was ample evid to support state's contention that def was intoxicated. Jones v S, 111<5>600 (2003)

ERROR TO EXCLUDE: BREATH

NOT ERROR TO EXCLUDE: BREATH

HARMLESS: BREATH

EVIDENCE PROPERLY ADMITTED: BLOOD TEST

BLOOD TEST EVIDENCE

It was not error to admit blood-alcohol level test results over contention Dimension RXL results are not reliable where experts (machine operator, lab supervisor, and general director of pathology at hospital that performed test) testified to their training and qualifications in their field and that the science implemented on the Dimension RXL is accepted in their scientific and medical communities; described in detail how the methodology and scientific techniques of the Dimension RXL worked to detect alcohol; operating manual that witness relied on daily detailed the scientific principles involved; and operator testified that in analyzing def's blood sample he implemented techniques he learned in training on the machine. Wooten v S,

267<14>289 (2008)

It was not error to admit medical records showing result of blood sample test taken at hospital where def received medical treatment, over contention state failed to show the method of preparation of the report was reliable, where records were admitted under Rule 803(6) as business record and predicate was shown through custodian of records. If error, was harmless, where there was no testimony interpreting results of test and was more likely jury ignored test results and relied on opinion of investigating officer. Serrano v S, 936<14>387 (1996)

In pros for DWI under 67011-1(f) witness could lay predicate for introduction of records of blood alcohol test and results under

TRCrE 803(6), where he was custodian of the records at the Abilene lab and testified all DPS labs used the same procedures and that he was familiar with those procedures. *Mitchell v S*, 750<2>378.

It was not error to deny motion to suppress results of blood test where def was not under arrest when blood sample was taken, so consent was not required under 67011-5, and sample taken at hospital was not at state's request and was admissible, so any error in admission of first sample taken by officer at scene

of car wreck was harmless. *Weaver v S*, 721<1>495.

In pros for involuntary manslaughter, it was not error to admit blood test results on sample taken in violation of 67011-5 sec. 3(c) where def opened door by asking on cross examination if witness ran tests on def's blood and he answered that he had; state's evid on redirect clarified earlier cross examination and removed any false impression. *Dams v S*, 872<9>325

**EVIDENCE
PROPERLY
ADMITTED:
BLOOD TEST:
CONSENT**

Also see notes above at BREATH TEST on consent.

In pros for intoxication manslaughter, it was not error to deny motion to suppress results of blood test, over claim consent was coerced, where officer testified def did not smell of alcohol, and when asked by officer if he would provide sample of his blood he agreed to do so and was taken to medical center where he provided sample; def was not informed of his Miranda rights; officer testified def was not placed under arrest but equivocated when asked if def was handcuffed; officer denied using threats or other tactics to overbear def's will; blood test showed presence of amphetamine and methamphetamine in def's system. Def did not controvert officer's testimony. *Dunn v S*, 176<2>880 (2005)

In pros for DWI it was not error to deny motion to suppress blood evid obtained after def's accident and results of tests on that blood, where evid showed def voluntarily consented to providing police a sample of her blood and officer made no misrepresentation in obtaining sample. Statutory warnings of chapter 724 did not apply because she was not under arrest when she consented, where she was in hospital x-ray room strapped to a backboard. *Ramos v S*, 124<2>326 (2003)

In pros for DWI it was not error to deny motion to suppress blood evid obtained after def's accident and results of tests on that blood, on claim scope of her consent was exceeded when nurse actually drew def's blood and gave sample to officer without her consent to turn over sample to police. Consent was given to officer when he asked for consent after def told officer accident happened because she had been drinking and was "too drunk." Also, was no evid def limited scope of her consent. Because def had already consented to giving blood sample to officer, additional consent for nurse to hand sample to officer was not required. *Ramos v S*, 124<2>326 (2003)

In pros for DWI evid was suff to prove def gave voluntary consent for taking of blood, where def was not under arrest nor in custody at time he consented to give the specimen, so statutory implied consent statute (724.011-724.019) did not apply. Because def was not under arrest, statutory warning read to def was not applicable and incorrectly informed def that he was under arrest and that his refusal to give specimen would result in suspension of his driver's license, but claim of psychological coercion from wording of forms caused him to consent was not supported by his conduct at scene and at medical center, and nothing in record suggested hesitation, question, or protest on his part. Totality of circs included (1) def

**EVIDENCE
PROPERLY
ADMITTED:
BLOOD TEST:
PROBABLE
CAUSE**

Affidavit* for search warrant to draw a specimen of defendant's blood was sufficient to provide probable cause even though it never specifically stated defendant was the person who was driving, where it explained officer had good reason to believe defendant had operated a motor vehicle, described how many officers saw a car progress recklessly and illegally through city streets, explained officers stopped car that they observed being driven recklessly and illegally, and then said that at the scene of the stop officer made contact with defendant. Magistrate could have reasonably inferred that defendant drove the vehicle described in the affidavit. *Hogan v S*, 329<2>90 (2010)

Affidavit* for search warrant to draw a specimen of defendant's blood was sufficient to provide probable cause even though it did not define field sobriety tests' acronyms or explain the nature or significance of the tests; even if magistrate did not understand acronyms or know about the tests, affidavit still informed magistrate in plain language that defendant showed 15 combined clues of intoxication on the tests; affidavit also stated defendant recklessly drove a vehicle, had a strong odor of alcohol, bloodshot, watery and heavy eyes, a swayed and unsteady balance, and a staggered walk; and that he had refused to provide a breast specimen. *Hogan v S*, 329<2>90 (2010)

Affidavit* for search warrant to draw a specimen of defendant's blood was sufficient to provide probable cause even though it might have been more complete if it had detailed officer-affiant's

was not under arrest or in custody, and was not arrested until several months later when blood test results were obtained; (2) at time of consent def was not seriously injured but was in a medical center, and not in coercive jail house surroundings; (3) no physical force was used and def was cooperative; (4) def was not interrogated and not asked to perform field sobriety tests; (5) officer did not claim to have and did not threaten to obtain a search warrant; (6) def was given Miranda warnings; (7) nothing rebutted presumption def was aware of his Fourth Amendment rights; (8) was no claim def was immature, uneducated, or unsophisticated; (9) could be inferred def was motivated to give specimen because he believed he was not intoxicated; and (10) at time of consent def voiced no concern about wording of forms read to him. Totality of circs showed state proved by clear and convincing evid that def's consent was voluntary. *Combest v S*, 981<3>958 (1998)

It was not error to admit medical records showing result of blood sample test taken at hospital where def received medical treatment, over contention state failed to show he consented to the blood test. 67011-5 sec. 2(a), on which def relied, did not apply where was no evid investigating officer requested hospital to collect blood sample or conduct test, state took very little action until filing complaint seven months after accident, and evid did not show def was under arrest so no consent was required. *Serrano v S*, 936<14>387 (1996)

In pros for DWI it was not error to deny motion to suppress results of blood test taken in hospital, over contention blood was drawn without voluntary and informed consent after arrest, where was evid def was given statutory warning, def orally consented to providing blood specimen, and def signed hospital consent to drawing blood specimen. Trial court could reject def's testimony to contrary. *Peddycord v S*, 942<7>100 (1997)

In pros for DWI it was not error to admit results of blood test over contention def was in no condition to be able to give a voluntary and informed consent to taking of the sample, where officer gave def Miranda warnings and 67011-5 warnings to def and he appeared to understand her, was conscious and aware of what was going on around him, and def did not testify at suppression hearing. *Yeary v S*, 734<2>766.

Whether def was under arrest when blood sample was taken for blood-alcohol test, was immaterial where record showed def signed consent form. *Bennett v S*, 723<2>359.

experience in DWI cases; such information was not required to make affidavit adequate; many facts included in affidavit would lead and untrained, common person to believe that defendant was driving vehicle while he was intoxicated. *Hogan v S*, 329<2>90 (2010)

Affidavit provided probable cause to obtain a search warrant for a blood sample where it reported that defendant smelled strongly of alcohol, had red and glassy eyes, slurred speech, poor balance, and that he refused to provide a breath or blood sample; it also showed defendant was geographically disoriented because he thought he was on the north side of Houston when he was 70 miles south in another county; affidavit stated defendant admitted to driving; and officer stated in an affidavit that, "I have seen intoxicated persons on many occasions in the past. Based on all of the above and my experience and training, I determined that the suspect was intoxicated..." *Foley v S*, 327<13>907 (2010)

In pros for DWI it was not error to deny motion to suppress results of blood test taken in hospital, over contention results of blood test were obtained as incident to unlawful arrest, where probable cause for arrest for public intoxication was supported by p/o having reasonably trustworthy info that def was driving car at time of collision and p/o observations and tests revealed def was intoxicated. *Peddycord v S*, 942<7>100 (1997)

ADMISSIBILITY OF EVIDENCE

724.064

Admission of hospital blood-test results showing DWI def's excessive blood-alcohol level was not violation of right to confrontation, where officer testified he took def to hospital to check degree of his injuries, for his well-being and care; that he did not take def to hospital as part of his investigation and did not request that blood be drawn; and nurse testified def's blood was drawn for medical care and not at law enforcement's request. Trial court could conclude the report was not testimonial and Crawford was not implicated. *Goodman v S*, 302<6>462 (2009)

Admission of blood alcohol test results did not violate def's right of confrontation. No merit to contention that because computer

In pros for DWI it was not error to admit evid of def's blood alcohol content as reflected in his medical records, over contentions (1) evid failed to show the blood sample tested was his and (2) chain of custody of blood sample tested was not shown, where evid showed a physician requested the blood sample, the sample was carefully identified as def's at time it was taken pursuant to hospital policies and procedures, the blood sample collected and identified was promptly sent by pneumatic tube to lab for analysis, and tests revealed the high alcohol content of the blood sample. That witness who took blood sample could not recall taking def's blood sample, or that witness who performed lab tests gave contradictory testimony on whether he remembered performing lab tests on def's blood sample, went to weight, not admissibility, of evid. There was no evid suggesting def's blood sample was not collected and tested in conformance with hospital's policies and procedures. *Durrett v S*, 36<14>205 (2000)

It was not error to admit results of blood test over chain of custody objection, where state showed each person who had possession of blood sample from beginning to end of chain, and no evid of tampering was raised. *Burns v S*, 807<13>878.

In pros for DWI it was not error to admit results of blood test over contention chain of custody was not shown, where all

Def had no constitutional or statutory reasonable expectation of privacy in blood-alcohol test results created by private hospital in course of emergency medical treatment following an accident, which were later submitted to police in response to subpoena. Lacking any such expectation, def had no standing to complain of any alleged defects in subpoena process. *Ramos v S*, 124<2>326 (2003)

In pros for DWI it was not error to deny motion to suppress evid of blood-alcohol level, where test results were obtained for medical purposes following accident, and later subpoenaed by grand jury. Def did not have a reasonable expectation of privacy in test results obtained for medical purposes after accident, and

In pros for DWI it was not error to deny motion to suppress blood test results over claim it was obtained in violation of law by a private party when hospital committed assault by drawing def's blood without consent or any statutory exception. Def asserted assault under 22.01(a)(3) PC, but did not show element of assault that hospital knew or reasonably should have known def would regard physical contact involved in drawing of blood as offensive or provocative; def was taken to hospital by ambulance for emergency treatment after motorcycle accident; he was bleeding, suffering a head injury, and not in "very good condition;" he knew his blood was being drawn for medical treatment but was no evid he ever indicted to hospital personnel that he did not want his blood drawn, though he was capable of expressing his desire not to have it drawn. *Mayfield v S*, 124<5>377 (2003)

In pros for DWI it was not error to deny motion to suppress blood evid obtained after def's accident and results of tests on that blood, on claim drawing blood by hospital personnel was assault, where there was direct evid def had consented to provide blood sample to officer while in hospital following

It was error to admit expert testimony that def was intoxicated at time of arrest based on his blood alcohol content two hours after arrest, where that testimony did not meet requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993) and *Kelly v S*, 824/568 (1992). *Mata v S*, 46/902 (2001)

Where admission of blood test results was error, it was also error to admit testimony regarding the results, interpreting them

program used in gas chromatograph machine used to analyze his blood was not available for him in court to examine, he was not able to properly cross-examine the "witness" (computer program) as to its calculations and calibrations. The computer program was not a person under rule 601 and could not be called to testify. Also, trial objection did not challenge scientific reliability of machine nor right to confront and cross-examine witness who provided expert testimony regarding gas chromatograph and def's blood test. *Torres v S*, 109<2>602 (2003)

witnesses in chain testified at trial except nurse who withdrew blood sample, and where officer who observed her conduct testified to those observations. *Yeary v S*, 734<2>766.

For results of a blood test to be admissible, a proper chain of custody of the blood sample that was drawn from def and later tested must be established. It was not error to admit results of blood test where evid showed same lab number and sample was handled in methodical manner; there was no evid the sample was tampered with or misplaced at any time; if was error to allow the vial to be introduced, it was harmless where the chain of custody of the blood sample was sufficiently proven to allow admission of the test results. *Moone v S*, 728<14>928.

In pros for DWI evid was suff to show chain of custody of blood sample where p/o testified he gave vial for blood sample to MD at scene of accident for blood sample from def, technician testified she assisted doctor in taking sample from def in vial given doctor by officer and after sample was taken vial was returned to officer, officer testified he placed vial received from doctor in glove compartment and hand delivered it to chemist, and chemist testified to receiving vial from officer and identified vial at trial. *Keenan v S*, 700<7>12.

no standing to complain of any defects in grand jury subpoena process. *Garcia v S*, 95<1>522 (2002)

In pros for DWI it was not error to deny motion to suppress blood alcohol test results, over contention hospital employee took blood for assistance in diagnosing and treating him and disclosure of test results to state amounted to a seizure of his medical records in violation of his legitimate reasonable expectation of privacy in those records. Disclosure of blood alcohol test results was not prohibited by statute and under Rule 509 the test result was not privileged. *Corpus v S*, 931<3>30 (1996)

accident, and her consent to medical treatment at hospital could be inferred where testimony indicated def was alert and oriented at hospital, and at scene of accident she expressed desire for medical treatment and desire to go to hospital. *Ramos v S*, 124<2>326 (2003)

In pros for DWI it was not error to deny motion to suppress blood test results, over claim taking of def's blood by hospital personnel was an assault so results were obtained illegally. Although def refused to give officer consent to take blood sample, he presented no evid surrounding actual taking of his blood, and was no evid explaining events after officer left hospital; although def did not give his wife permission to sign hospital consent form on his behalf, was no evid to explain why she signed the form. No merit to contention hospital personnel were agents of state; hospital records of test results were obtained by subpoena; nothing in record showed hospital personnel were acting as state agents for law enforcement purposes when blood was drawn and analyzed. *Spebar v S*, 121<4>61 (2003)

and stating legal intoxication in Texas. *Turner v S*, 734<6>186.

Error in admitting blood test results and legal interpretation was not harmless where record showed jury was deadlocked 3-3 until after request for rereading testimony on the matter and 10 minutes after prior testimony was read jury convicted. *Turner v S*, 734<6>186.

**EVIDENCE
PROPERLY
ADMITTED:
BLOOD TEST:
RIGHT OF
CONFRNTATN**

**EVIDENCE
PROPERLY
ADMITTED:
BLOOD TEST:
CHAIN OF
CUSTODY**

**EVIDENCE
PROPERLY
ADMITTED:
BLOOD TEST:
EXPECTATN
OF PRIVACY**

**EVIDENCE
PROPERLY
ADMITTED:
BLOOD TEST:
ASSAULT**

**ERROR
TO ADMIT:
BLOOD**