

Baker's Texas Penal Code Handbook

2012 Edition

by Lang Baker

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ABBREVIATIONS

*	indictment or charge set out in opinion
c/w(s)	complaining witness(es)
CCA	Code Construction Act
CCP	Code of Criminal Procedure
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)
MD	doctor
p/o(s)	peace officer(s)
PC'25	1925 Penal Code
PC'74	1974 Penal Code
poss	possession
pros	prosecution
rev prob	revocation of probation
suff	sufficient(cy)
TDC	Texas Department of Corrections
w/o	without

CITATION FORM

v S = v State
Ep = Ex Parte
: = S.W.2d or 3d, Texas Supreme Court
/ = S.W.2d or 3d, Court of Criminal Appeals
<#> = S.W.2d or 3d, Court of Appeals
vol. nos. 338 and less = S.W.3d

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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.

**Sample pages continue on the next page
with text from another part of the book.**

Sec. 30.04. Burglary of Vehicles

- (a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.
- (b) For purposes of this section, "enter" means to intrude:
 - (1) any part of the body; or
 - (2) any physical object connected with the body.
- (c) For purposes of this section, a container or trailer carried on a rail car is a part of the rail car.
- (d) An offense under this section is a Class A misdemeanor, except that:
 - (1) the offense is a Class A misdemeanor with a minimum term of confinement of six months if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section; and
 - (2) the offense is a state jail felony if:
 - (A) it is shown on the trial of the offense that the defendant has been previously convicted two or more times of an offense under this section; or
 - (B) the vehicle or part of the vehicle broken into or entered is a rail car.
- (d-1) For the purposes of Subsection (d), a defendant has been previously convicted under this section if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.
- (e) It is a defense to prosecution under this section that the actor entered a rail car or any part of a rail car and was at that time an employee or a representative of employees exercising a right under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

<p>Offense of 30.04 & felony grade punishment does not deny equal protection or impose cruel & unusual punishment by creating greater punishment than for petty thefts not committed</p>	<p>by burglary of a vehicle. Hunt v S, 625<4>405.</p>	<p>CONSTITUTIONALITY</p>
<p>An individual who reaches into the open bed of a pickup truck with intent to remove property does break the close of the vehicle and as such enters part of the vehicle for purposes of 30.04. There is no need for bed of pickup truck to be enclosed by a tarpaulin or camper shell or some other structure for it to be protected under 30.04. Richardson v S, 888/822 (1994)</p> <p>30.04 uses "break into" and "enter" but only defines enter; definition of enter is broad enough to include break into. Landry v S, 653/28.</p> <p>"Enter" & "breaking into" are not two different ways to commit offense under 30.04; when entry is alleged it includes breaking into. Landry v S, 653/28.</p>	<p>Removal of battery from under hood of vehicle is suff to constitute burglary of vehicle. Griffin v S, 785<5>179, reversed on other grounds, 815/576.</p> <p>Because "enter" is defined the same under 30.02 and 30.04, the element of intrusion into a building or habitation under 30.02 should be of the same nature as intrusion into a vehicle under 30.04; taking hubcaps or tires attached to the exterior of a car, when no entry into any enclosed portion of the car is made to effectuate that taking, is not burglary of a vehicle. Griffin v S, 815/576.</p>	<p>CONSTRUCTION</p>
<p>Elements under 30.04 are: (1) a person (2) without the effective consent of the owner (3) breaks into or enters a vehicle or any part of a vehicle (4) with intent to commit any felony or theft.</p>	<p>Washington v S, 603/859; Grant v S, 647<3>778.</p>	<p>ELEMENTS</p>
<p>Indictment* under 30.04 was not fund defective for failure to describe vehicle. Melancon v S, 690<14>78.</p> <p>Indictment* under 30.04 was not fund defective for alleging break & enter instead of break into. Landry v S, 653/28.</p> <p>Indictment* under 30.04 was subject to motion to quash for failure to describe vehicle by name, kind, number and owner where it only alleged "vehicle." Walters v S, 691<5>22.</p> <p>Def was not harmed by denial of motion to quash indictment for burglary of vehicle for failure to adequately describe the vehicle, where def's testimony at trial showed that the notice defect had</p>	<p>no impact on def's ability to prepare a defense, where state presented evid concerning only one box car and def's testimony revealed he was not confused or uncertain about what vehicle was burglarized. Walters v S, 715<5>63.</p> <p>Any error in denying motion to quash indictment for burglary of vehicle for failure to describe vehicle, did not impact def's ability to make defense, where witness gave description of vehicle in testimony at pre-trial hearing, and only one vehicle was involved in offense. Lewis v S, 751<14>895.</p>	<p>INDICTMENT</p>
<p>"Enter" & "breaking into" are not two different ways to commit offense under 30.04; when entry is alleged it includes breaking into. Landry v S, 653/28.</p>	<p>In pros under 30.04 it is suff to allege the elements without specifying the type of entry under 30.04(b). Washington v S, 603/859.</p>	<p>PLEADING</p>
<p>For cases on LAW OF PARTIES see notes at 7.02</p> <p>Evid was suff to prove intent to commit theft where evid showed def reached into car and was arrested with two marked dollar bills that were placed in purse in car as part of decoy operation. Thomas v S, 919<14>810 (1996)</p> <p>Trier of fact could conclude def was asserting a right to poss of stolen wallet, where he had it in his back pocket under circs that called into question his explanation for possessing it, in that he was approaching a car parked on freeway that did not belong to him, similar to circs in which wallet had been taken from another car two days before, and def's explanation of poss was disproved. Buchanan v S, 780<5>467.</p>	<p>It was not error to deny instructed verdict on claim def entered rather than broke into vehicle; enter includes break into. Reed v S, 767<2>293.</p> <p>In conv under 30.04, evid was suff to prove intent to commit theft, where evid showed def was seen bent over inside car on parking lot and seen placing a sack on the ground, which contained a six-pack of beer, and def possessed two pill bottles; and owner of car testified beer and pill bottles were his and def did not have consent to enter the car. Simmons v S, 590/137.</p> <p>In conv for burglary of a vehicle evid was not insuff on claim state did not prove def did break and enter vehicle; state is not required to prove both break and enter. Thomas v S, 919<14>810 (1996)</p>	<p>EVIDENCE SUFFICIENT</p>

IN CONVICTION UNDER 30.04 EVID WAS SUFFICIENT:

- : to prove intent to deprive, where evidence showed def walked to victim's truck, opened the door, and took out a gun; he then waved the gun in the air as he taunted and threatened the owner and his family. Fact that def later returned the gun after learning the police had been called did not render the evidence insufficient. Jury could reject def's testimony that he did not intend to deprive the owner of the gun. Brown v S, 294<6>203 (2009)
- : where stolen goods and tools used to commit offense were found in def's car short time after offense. Gonzalez v S, 869<13>588
- : to prove intent to commit theft even though def denied intent to commit theft and no property was taken from vehicle.

Cadieux v S, 711<3>92.

: where def took property from bed of pickup truck; there was entry into the bed of the truck when def reached inside the bed to take fishing rods. Richardson v S, 868<1>14 (1993)

: to prove intent to commit theft at time def entered c/w's car where def was acting in suspicious manner in parking lot in early morning hours and when ordered to stop he attempted to flee, he was later seen inside c/w's car without consent, a toolbox and tools were missing from c/w's car and a toolbox and tools were among the many items found in def's car, and other details in opinion. Beasley v S, 745<1>406.

: where officer observed def use a key to unlock door of car on car lot, enter car and try to start it, and leave when he could not start it, def was arrested and had possession of key to car; head of security of dealership testified def did not have consent to enter the car or possess key to the car; and def admitted an employee gave him key so he could steal the car, but denied having entered the car. Garcia v S, 732<13>673.

: where def was in possession of driver's license taken in burglary of car; def's explanation that he picked it up from ground shortly before arrest was proven false by testimony of arresting officer that he observed def during such time and def did not bend over or pick anything up. Buchanan v S, 780<5>467.

: where in addition to poss of recently stolen property with explanation proven false, def was seen approaching an unoccupied car parked on side of freeway that did not belong to him, under circs similar to burglary of c/w's car. Buchanan v S, 780<5>467.

: to prove def penetrated interior of pickup truck, where circs supported conclusion def took tools out of tool box attached to back of truck and took ladder from ladder rack attached to truck, which required def break the plane created by top of ladder rack and pickup bed. Hopkins v S, 864<14>119 (1993)

: to prove entry of enclosed portion of truck (30.04(b)), where def possessed screwdriver and crescent wrench belonging to c/w that circ evid indicated were inside tool box which was bolted and welded to his truck; the tool box with its lid closed was, for all intents and purposes, an enclosed part of the truck, analogous to the enclosed area beneath the hood or trunk lid of a vehicle. Ford v S, 860<9>731 (1993)

: to prove def broke into and entered c/w's car, even though c/w could not identify battery as the one taken from his car, where officers testified battery was missing from c/w's car, the battery found in bed of def's truck fit into c/w's battery bracket and the cables matched, and moisture and rust spots and pry marks on battery corresponded with the spots and marks on c/w's battery bracket. Griffin v S, 725<5>773.

: to prove car was owned by c/w, where officer observed a "white over blue" older model Buick parked near intersection of two named streets across from a church, c/w owned a green with white vinyl top 1969 Buick which he left at that intersection across from a church when he ran out of gas that night; later that night officer apprehended def as he exited the car; items in car def was in matched items in c/w's car; finder of fact could find beyond reasonable doubt that car def entered was car owned by c/w. Hall v S, 855<2>894.

: to prove entry of pickup truck where tires and flares were removed from bed of the truck. Smith v S, 781<5>675.

: to prove entry where def's fingerprint was found inside car and evid showed removal of T-Top of car which could have only been removed by unlatching it from the inside of the car. Penrice v S, 716<14>107.

: where def broke locks on a toolbox bolted to bed of pickup truck and removed items from the box; the toolbox was a part of the vehicle. Soto v S, 782<4>17.

EVIDENCE INSUFF Evid was insuff to prove entry where there was no evid of pry marks or damage to the vehicle so as to gain entry into its interior, nor was anything taken from its interior; mere removal of vehicle's wheel covers is not suff to prove burglary of a vehicle. Love v S, 744<14>247.

In conv for burglary of a vehicle evid was insuff to prove intent to commit theft of service where def hitched a ride on a freight train that did not provide passenger service for compensation, so theft of service was not possible. Ramirez v S, 711<8>408.

In pros under 30.04, evid was insuff to support conv, where evid showed def entered a truck parked on a lot adjacent to Chupik Corp, c/w's truck was parked on a lot adjacent to Chupik Building, and damage to inside of c/w's truck occurred on same day def was seen entering a truck, but there was no evid that

SUFF OF EVID TO REV PROB In rev prob evid was suff to show burglary of car where def was seen inside c/w's car, def told witness he was taking car stereo, car stereo was missing, and def fled scene. Morgan v S, 695<10>334.

Evid was suff to rev prob for burglary of vehicle where c/w testified battery was in place before offense and was missing when he returned, p/o saw def fumbling under hood of vehicle from which battery was removed and close hood when he noticed p/o, and battery was found on ground next to def with a towel over it. Alford v S, 676<13>199.

In rev prob under 30.04, evid was suff, where evid showed witness saw def in pickup truck "duck down;" after security

PROOF It was error for court of appeals to apply close juxtaposition rule in determining suff of evid, and was error to fail to apply law of parties in deciding suff of evid; remanded to court of appeals. Markham v S, 751/190.

Whether possession is recent to support inference of guilt is a question of fact to be determined in light of all the circs. Buchanan v S, 780<5>467.

Possession of stolen property less than two days after offense was recent. Buchanan v S, 780<5>467.

CHARGE In pros under 30.04 charge was not fund defective for stating "break or enter" in application paragraph, where abstract portion and statute state "break into or enter", where in light of charge as a whole and the evid and jury argument the jury could not have been misled. Melancon v S, 690<14>78.

In pros under 30.04 charge was not fund defective for submitting break into or enter where indictment alleged break and enter because enter includes break into. Landry v S,

c/w's truck and truck def entered were the same truck, and evid of location of c/w's truck was inconsistent with location of truck def entered. Bryant v S, 574/109.

Evid was insuff where state relied on possession of property from burglary in vehicle in which def was only shown to have been a passenger. Jackson v S, 645/303.

In pros under 30.04, evid was insuff, where def was placed at scene 10 to 15 minutes before c/w's arrival, but was not seen around or near the pickup truck, and only evid connecting def with offense was his poss 5 or more hours before offense of handkerchief similar to one found in the truck after the illegal entry, and presence of blood on the handkerchief in the truck and on def's arm shortly after the offense. Escamilla v S, 556/796.

guards persuaded def to get out of truck, he ran away, but was caught; vent window of truck had been pried open and CB forcibly removed from its mounting; and owner had left truck locked and did not give def consent to enter. Kelly v S, 550/69.

In rev prob under 30.04, evid was suff to prove entry of automobile, where evid showed def entered bed of pickup truck, and it was not necessary to show entry into the cab portion of the truck. Coleman v S, 608/923.

Evid was insuff to rev prob where state relied on possession of property from burglary in vehicle in which def was only shown to have been a passenger. Jackson v S, 645/303.

To prove burglary of vehicle state must show a person who without effective consent of owner breaks into or enters any part of vehicle with intent to commit any felony or theft. Alford v S, 676<13>199.

To conv for burglary of a vehicle, there is no requirement that there be entry into an enclosed portion of the vehicle. Richardson v S, 868<1>14 (1993)

653/28.

In conv under 30.04 charge was not fund defective for allowing conv on theory not alleged in indictment* where it alleged def entered & charge allowed conv if def did break into or enter, because under facts of case where glass part of vent window had been pried & broken out & then def reached inside opened door & entered vehicle, to break into necessarily is an entry under definition in 30.04(b). Robles v S, 653/15.

BURGLARY OF VEHICLES

30.04

In pros under 30.04 charge was not fund defective for allowing conv if def broke into or entered car, where indictment only alleged def broke into, where under facts of case evid showed def broke into and entered car, and def could not have entered the car without breaking into it; and defense theory was that def did not even touch the car. Garcia v S, 732<13>673.

trespass is not an included offense of burglary of a vehicle, and because charge requested at trial did not put court on notice of theory asserted on appeal, where theory at trial was def committed criminal trespass when he entered used car lot and theory on appeal was he committed criminal trespass when he entered vehicle. Cadieux v S, 711<3>92.

In pros for burglary of a vehicle it was not error to refuse charge on included offense of criminal trespass because criminal

In pros for burglary of motor vehicle, it was not error to deny charge on included offense of attempted burglary of vehicle; def and his companion both testified that he did not commit the burglary; they denied that he approached or touched the car; the only evidence in the record established either 1) his guilt of burglary of a motor vehicle, or 2) innocence of any offense. White v S, 867<1>921 (1993)

In pros for burglary of a vehicle it was not error to deny charge on included offense of criminal trespass. Criminal trespass is not an included offense of burglary of a vehicle. Thomas v S, 919<14>810 (1996)

In pros for burglary of a vehicle it was not error to deny charge on included offense of criminal trespass, because that offense is not included in burglary of a vehicle. Cheak v S, 757<7>172.

In pros for theft, 31.03 and burglary of a vehicle, 30.04, where jury convicted def of theft under charge that required it to acquit def of burglary before it could consider theft charge, verdicts were not inconsistent since it could have found def appropriated

c/w's property unlawfully even if it found he did not burglarize c/w's car. Walker v S, 701<3>316. **VERDICT**

Judgment reformed by correcting recitation of burglary of a building to read burglary of a motor vehicle where record

showed that was true offense. Trevino v S, 697<4>476. **JUDGMENT**

Where def was charged in two count indictment of burglary of vehicle and theft, state elected to proceed on burglary count and jury was so instructed and convicted def of burglary,

judgment was reformed on appeal from conv for theft to conv of burglary. Carter v S, 668<4>851. **DISPOSIT 'N**

Sec. 30.05. Criminal Trespass

(a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle, without effective consent and the person:

- (1) had notice that the entry was forbidden; or
- (2) received notice to depart but failed to do so.

(b) For purposes of this section:

(1) "Entry" means the intrusion of the entire body.

(2) "Notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;

(D) the placement of identifying purple paint marks on trees or posts on the property, provided that the marks are:

(i) vertical lines of not less than eight inches in length and not less than one inch in width;

(ii) placed so that the bottom of the mark is not less than three feet from the ground or more than five feet from the ground; and

(iii) placed at locations that are readily visible to any person approaching the property and no more than:

(a) 100 feet apart on forest land; or

(b) 1,000 feet apart on land other than forest land; or

(E) the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.

(3) "Shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(4) "Forest land" means land on which the trees are potentially valuable for timber products.

(5) "Agricultural land" has the meaning assigned by Section 75.001, Civil Practice and Remedies Code.

(6) "Superfund site" means a facility that:

(A) is on the National Priorities List established under Section 105 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9605); or

(B) is listed on the state registry established under Section 361.181, Health and Safety Code.

(7) "Critical infrastructure facility" means one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders:

(A) a chemical manufacturing facility;

(B) a refinery;

(C) an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;

(D) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(E) a natural gas transmission compressor station;

(F) a liquid natural gas terminal or storage facility;

(G) a telecommunications central switching office;

(H) a port, railroad switching yard, trucking terminal, or other freight transportation facility;

(I) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas; or

(J) a transmission facility used by a federally licensed radio or television station.

(8) "Protected freshwater area" has the meaning assigned by Section 90.001, Parks and Wildlife Code.

(9) "Recognized state" means another state with which the attorney general of this state, with the approval of the governor of this state, negotiated an agreement after determining that the other state:

(A) has firearm proficiency requirements for peace officers; and

(B) fully recognizes the right of peace officers commissioned in this state to carry weapons in the other state.

(10) "Recreational vehicle park" means a tract of land that has rental spaces for two or more recreational vehicles, as defined by Section 522.004, Transportation Code.

- (11) "Residential land" means real property improved by a dwelling and zoned for or otherwise authorized for single-family or multifamily use.
- (c) Repealed by HB 2609, 2009, eff. 9/1/09.
- (d) An offense under this section is:
- (1) a Class B misdemeanor, except as provided by Subdivisions (2) and (3);
 - (2) a Class C misdemeanor, except as provided by Subdivision (3), if the offense is committed:
 - (A) on agricultural land and within 100 feet of the boundary of the land; or
 - (B) on residential land and within 100 feet of a protected freshwater area; and
 - (3) a Class A misdemeanor if:
 - (A) the offense is committed:
 - (i) in a habitation or a shelter center;
 - (ii) on a Superfund site; or
 - (iii) on or in a critical infrastructure facility; or
 - (B) the person carries a deadly weapon during the commission of the offense.
- (e) It is a defense to prosecution under this section that the actor at the time of the offense was:
- (1) a firefighter or emergency medical services personnel, as defined by Section 773.003, Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances;
 - (2) a person who was:
 - (A) an employee or agent of:
 - (i) an electric utility, as defined by Section 31.002, Utilities Code;
 - (ii) a telecommunications provider, as defined by Section 51.002, Utilities Code;
 - (iii) a video service provider or cable service provider, as defined by Section 66.002, Utilities Code;
 - (iv) a gas utility, as defined by Section 101.003 or 121.001, Utilities Code; or
 - (v) a pipeline used for the transportation or sale of oil, gas, or related products; and
 - (B) performing a duty within the scope of that employment or agency; or
 - (3) a person who was:
 - (A) employed by or acting as agent for an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property; and
 - (B) performing a duty within the scope of that employment or agency.
- (f) It is a defense to prosecution under this section that:
- (1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun was forbidden; and
 - (2) the person was carrying a concealed handgun and a license issued under Subchapter H, Chapter 411, Government Code, to carry a concealed handgun of the same category the person was carrying.
- (g) It is a defense to prosecution under this section that the actor entered a railroad switching yard or any part of a railroad switching yard and was at that time an employee or a representative of employees exercising a right under the Railway Labor Act (45 U.S.C. Section 151 et seq.).
- (h) [after amended (non-substantive) 9/1/11 (SB 1303, 2011)] At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(3)(A)(iii), the defendant may raise the issue as to whether the defendant entered or remained on or in a critical infrastructure facility as part of a peaceful or lawful assembly, including an attempt to exercise rights guaranteed by state or federal labor laws. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection (d)(3)(A)(iii) does not apply.
- (i) This section does not apply if:
- (1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun or other weapon was forbidden; and
 - (2) the actor at the time of the offense was a peace officer, including a commissioned peace officer of a recognized state, or a special investigator under Article 2.122, Code of Criminal Procedure, regardless of whether the peace officer or special investigator was engaged in the actual discharge of an official duty while carrying the weapon.
- (j) Repealed by HB 2609, 2009, eff. 9/1/09.

CONSTITUTIONALITY Criminal trespass statute was not unconstitutionally applied to def, on claim it violated right to free expression. Evid showed def was not asked to leave premises until he refused five requests to move to university's free expression area. There was no evid def was asked to move to the free expression area because of content of his message. Spingola v S, 135<14>330 (2004)

A general trespass statute may be constitutionally applied, even to those who trespass to communicate, as long as the statute is applied without discrimination and is not used for primary purpose of suppressing speech. Spingola v S, 135<14>330 (2004)

Nothing preserved for review on claim statute was unconstitutional as applied to def where issue was not raised in trial court. Bader v S, 15<3>599 (2000)

30.05 is not unconstitutionally overbroad. No merit to contention it unconstitutionally permits public university officials to ban persons from campus for no reason or unconstitutional reasons. Public university campus was generally a nonpublic forum, so university may restrict access so long as the regulations are reasonable and do not attempt to suppress expression because of opposition to a speaker's views. Bader v S, 15<3>599 (2000)

Criminal trespass was not unconstitutional as applied to def, on claim of violation of free speech, where offense occurred in a church, a non-public forum, and evid showed criminal trespass law was not used to regulate def's speech. There was no evid that def was asked to leave premises because of content of his speech, but he was asked to leave because he continued to

interrupt presentation. Thompson v S, 12<9>915 (2000)

30.05 is not unconstitutionally vague for failure to define "remain;" "remain" is "to stay," without reference to time; a stay of any length of time after entry would satisfy the "remain" requirement. Hernandez v S, 783<4>764.

Application of criminal trespass to def did not violate constitutional right of free speech, where def crossed police barricade to enter city park that had been leased to private group; at time of offense park was closed to everyone except private organization and its guests; def could protest so long as he remained outside barricades blocking entrance to park; public ownership of park did not make it public forum under facts here at time of offense. Otwell v S, 850<2>815.

Pros for criminal trespass did not violate def's rights of free speech and assembly, where def was asked to leave premises because of his disruptive behavior [details in opinion]. Gollinger v S, 834<14>553.

Criminal trespass as part of anti-abortion protest at abortion clinic was not protected free speech. Zarsky v S, 827<13>408.

Conv under 30.05 did not violate free speech right, where defs refused to leave public school grounds where they were distributing anti-abortion booklets, the school ground was not a public forum area, and was no evid school officials acted because of content of def's views. Reed v S, 762<6>640.

In pros under 30.05, contention def's conduct was protected free speech under First Amendment and under Texas Constitution was without merit, where def picketed on private

CRIMINAL TRESPASS

30.05

church property. *Gibbons v S*, 775<5>790.

Application of criminal trespass to conduct of husband entering apartment of estranged wife without consent was not such an

unforeseeable judicial interpretation as to violate ex post facto. *Davis v S*, 799<8>398.

In pros for sale of alcoholic beverage to a minor it was not error for trial court to deny motion to suppress. No merit to contention that minor used in sting operation by TABC officers was guilty of criminal trespass when she entered premises that had sign posted that prohibited minors from being on the premises. By accepting a license or permit to sell alcohol, the premises lounge consented to inspection by TABC agents. The minor was recruited by and under the immediate supervision of TABC agent to help conduct a sting operations that was expressly contemplated by the legislature. Therefore, minor was not a criminal trespasser under 30.05. *Phillips v S*, 161/511 (2005)

On appeal from delinquency adjudication, it was not error to deny plea to jurisdiction of trial court on claim state was required to prosecute def for trespass on school property (Education Code sec. 37.107) rather than under criminal trespass, and that the school trespass offense is misdemeanor not in jurisdiction of district court. The two statutes are not in pari materia, so state could prosecute under either. In re *J.M.R.*, 149<3>289 (2004)

Conviction for criminal trespass on an airplane, where passenger refused to voluntarily leave airplane, reversed. Criminal trespass applies only to real property, not to an airplane. *Sarsfield v S*, 11<14>326 (1999)

Although defense under 30.05(c) for firefighters and emergency medical personnel does not apply to law enforcement officers,

justification under 9.21 does. Officer who chased fleeing def and entered def's apartment to make arrest did not commit criminal trespass because his conduct was justified under 9.21. *Rue v S*, 958<14>915 (1997)

Gist of criminal trespass is a purposeful act of trespass on land not one's own. It does not criminalize acts done in good faith as proper exercise of ownership under a claimed right. If a person is acting under a bona fide claim of right he is not guilty of a crime. *Gornick v S*, 947<6>678 (1997)

Criminal trespass requires no culpable mental state other than volitional refusal to leave when requested; that def thought he was lawfully entitled to do what he was doing did not render evid insuff. *Reed v S*, 762<6>640.

Criminal trespass applies only to real property and does not extend to unauthorized intrusions into motor vehicles. *Cadieux v S*, 711<3>92.

Criminal trespass prohibits entry into prohibited area of a building even if other parts of building are open to the public. *Milton v S*, 751<14>908.

15.05 sec 3 CCP requires designation of place of offense of criminal trespass. *Villarreal v S*, 729<8>348.

No culpable mental state is required to establish criminal trespass. *Dunn v S*, 979<7>403 (1998)

The elements of criminal trespass are: (1) a person (2) without effective consent (3) enters or remains on the property or in a building of another (4) knowingly or intentionally or recklessly (5) when he had notice that entry was forbidden or received notice to depart but failed to do so. *Day v S*, 532/302; *Ortiz v S*, 626<7>586; *Daniels v S*, 633/899; *Moreno v S*, 702/636.

Offenses of burglary of a habitation and criminal trespass have same elements except that burglary has element of intent to

commit a felony or theft, whereas criminal trespass has no such element but has in place a notice element. *Moreno v S*, 702/636. **ELEMENTS**

Ownership is not element of criminal trespass, but where state pled named owner, it was required to prove allegation. *Langston v S*, 855/718.

In pros under 30.05, element of intentionally or knowingly entering is a different element than element that def knew entry was forbidden. *Holloway v S*, 583/376.

In pros for criminal trespass it was not error to deny motion to quash information for failure to give notice by specifying what notice def received to depart. *Thompson v S*, 12<9>915 (2000)

In pros for criminal trespass it was not error to deny motion to quash information for failure to give notice by failure to include a description of the real property where offense occurred, where def's motion to quash recited exact address of property and attached to his motion was complaint filed by arresting officer which gave location of premises. *Thompson v S*, 12<9>915 (2000)

Information* alleging criminal trespass was not subject to motion to quash for containing allegation of a specific complainant and the term "owner thereof," rather than the precise statutory term of "another." *S v Kinsey*, 861/383 (1993)

Information alleging criminal trespass was not subject to motion to quash for containing allegation of a specific complainant and the term "owner thereof," rather than the precise statutory term of "another." *S v Garcia*, 861/386 (1993)

In pros under 30.05 def was not harmed by failure to allege general location in county of premises, 21.09 CCP, where about a week before trial defs received actual notice of location of premises in recitation in state's motion in limine. *Erlandson v S*, 763<14>845.

Information was not subject to motion to quash for failure to allege notice to depart was given by property owner; state is not required to plead notice to depart was given by property owner. *Chunn v S*, 821<1>718.

It was not error to deny motion to quash for failure to allege location of property, 21.09 CCP; offense is against owner's possession and control of property, not against property itself. *Chunn v S*, 821<1>718. **INDICTMENT**

In pros under 30.05 it was not error to deny motion to quash under 21.11 CCP for failure to allege facts surrounding notice given under elements of offense, which constituted evidentiary facts; information alleged acts defs committed and tracked statute. *Erlandson v S*, 763<14>845.

It was not error to grant motion to quash information* alleging criminal trespass for failure to allege def trespassed on property "of another"; it was not suff to merely allege owner because def and alleged owner could both be owners under 1.07(a)(24); definition of another, 1.07(a)(4) is different from definition of owner, and information as drafted permitted conviction even if def owned property jointly with c/w. *S v Staley*, 814<1>534.

In pros under 30.05(a), information* was not fund defective for failure to allege who told def to leave. *Bobo v S*, 757<14>58.

On appeal by state, order quashing indictment* for criminal trespass, affirmed. Indictment did not identify to whom the property belonged, and failed to provide an address or description of the property. The absence of both the owner and location of property gave def insuff notice. Simply alleging def had trespassed on unidentified property somewhere in the county, belonging to an unknown person, did not give def suff notice. *S v Mendieta*, 898<4>11 (1995)

In rev prob under 30.05, motion to revoke was suff to fairly apprise def of the offense charged where def entered plea of

true. *Peoples v S*, 566/640. **MOTION TO REV PROB**

On appeal from delinquency adjudication for criminal trespass, evid was legally suff to prove def did not have consent to re-enter c/w's residence after leaving for the night; after def left the home when it got dark (under rules of the house), he let himself back in without being invited by either c/w or any of children who lived in the residence; def had been informed of the rules of the house about when to leave on numerous occasions and was asked to leave that night when the time came under the rules of the house. In re *D.J.H.*, 186<2>163 (2006)

On appeal from delinquency adjudication for criminal trespass, evid was legally suff to prove def had notice that he lacked c/w's consent to re-enter c/w's residence after leaving for the night; after def left the home when it got dark (under rules of the house), he let himself back in without being invited by either c/w or any of children who lived in the residence; def had been informed of the rules of the house about when to leave on numerous occasions and was asked to leave that night when the time came under the rules of the house. In re *D.J.H.*, 186<2>163 (2006) **EVIDENCE SUFFICIENT**

In juvenile delinquency proceeding evid was legally suff to support finding def engaged in delinquent conduct of criminal trespass, where conflicting evid was presented on whether def had been given warning to stay off apartment complex premises. In re S.S., 167<10>108 (2005)

In conv for criminal trespass evid was legally and factually suff to prove def was given notice that he would be trespassing at specific address alleged in information where testimony of apartment manager that she asked police department to patrol apartment complex and to warn off individuals having no business at the apartments was suff to show officer had apparent authority to give notice that entry at apartments was forbidden; and testimony of officer of location of apartment complex and that he warned def to stay off the apartment complex supported conclusion def was effectively warned off the entire apartment complex, which included specific address alleged in information. Evid was not rendered factually insuff by testimony of def's sister that she lived at apartment complex, that def often visited her and took her to dialysis treatment, and had talked to manager about allowing def on the property in order to help take care of her, where her testimony was contradicted by manager who testified def's sister never asked about whether def could visit her, and that she had past problems with def loitering and selling drugs at the premises, and that she frequently observed def's sister take the bus to her dialysis treatments. Williams v S, 138<10>43 (2004)

In conv for criminal trespass evid was legally suff to prove def knowingly remained on university grounds after being asked to leave, where evid of that fact was undisputed. No merit to contention that def thought he was entitled to remain in area where he was speaking and therefore had no intent to commit a crime; no culpable mental state is required under 30.05 other than volitional refusal to leave when requested. Spingola v S, 135<14>330 (2004)

In conv for criminal trespass evid legally and factually suff to prove def received oral notice that her entry onto c/w's land was forbidden where c/w testified he told his employee (X) to tell def "don't come back" after a prior incident and X testified she delivered message as instructed. Fact finder could reject def's testimony to contrary. No fatal variance presented between this evid and allegation that def received oral notice from c/w; def did receive notice, it was oral, and it was from c/w. Winkley v S, 123<3>707 (2003)

In conv for criminal trespass, evid was not legally insuff for failure to prove def entered and remained on property "of another." No merit to contention that property, a public university campus, was not the property "of another," but belonged to citizens of the state, including def. In cases involving public property, state satisfies "of another" element by proving c/w has a greater right to poss of property than def. Bader v S, 15<3>599 (2000)

In conv for criminal trespass evid was legally suff to prove def received notice to depart where testimony* showed witness provided def with suff notice to depart, provided him an opportunity to depart, and he intentionally refused to depart, and evid showed the witness had apparent authority to act for the owner. Thompson v S, 12<9>915 (2000)

In conv for criminal trespass evid was legally and factually suff where def was in possession of property stolen from residence that was recently broken into and burglarized. Fact that trial court found def not guilty of greater offense of burglary did not render evid insuff to support conv for lesser included offense of

criminal trespass. Jackson v S, 3<5>58 (1999)

In conv for criminal trespass evid was legally and factually suff to prove def had notice that entry was forbidden, where def entered house, there was a fence around back area of house, and house itself inherently gave suff notice because it was an enclosure obviously designed to exclude intruders. Jackson v S, 3<5>58 (1999)

In conv under 30.05(a) evid was suff, over contention evid showed a bona fide dispute concerning ownership of the property. Regardless of merit of claim of existence of a title dispute, evid of tax judgment, justice court judgment in forcible entry and detainer action, and testimony of title expert and two local attorneys was suff to prove c/w had greater right to poss than def. Sparkman v S, 968<12>373 (1997)

Evid was suff to prove def received notice to depart from owner or someone with apparent authority to act for owner, where c/w who asked def to leave testified he was in charge of all operations of bus maintenance facility at which offense occurred. Gollinger v S, 834<14>553.

In pros for criminal trespass, evid was not insuff on argument statute did not prohibit entry of portion of a building not open to the public when another part is open to the public. Milton v S, 751<14>908.

Evid was suff to prove without effective consent of owner and that def received notice to depart and failed to do so, where owner notified def her presence was not desired, and protesters were repeatedly asked to leave and told their failure to do so would result in arrests and filing of criminal charges. Bustillos v S, 832<8>668.

Evid was suff, in pros arising out of protest at abortion clinic, where def claimed he had permission of another tenant of premises to be there for business purposes, where evid at trial showed def was present as part of protest and not for business purposes, and that when asked to leave by person with authority to take care of property, def refused. Zarsky v S, 827<13>408.

In pros for criminal trespass at abortion clinic evid was suff to prove def received notice to leave premises by owner or one acting with apparent authority of owner, where c/w gave warnings at doors of clinic and asked people to leave and advised them that if they did not leave they would be trespassing, that def was at front of crowd blocking doorway, that officer at request of owner advised crowd they had been warned and were in violation of law and if they remained on premises they would be subject to arrest, that def attempted to make a deal with officer and was advised he was not making deals and that everybody had been warned and was subject to arrest at that time, that def then addressed the crowd and as officer and owner attempted to enter clinic people linked arms to prevent entry, and arrests began. Moses v S, 814<3>437.

Evid was suff to prove def was not owner and did not have right to possession of apartment, where def and c/w were married, c/w had moved out of marital abode and obtained an apartment in her own name, c/w had greater right to possession and had right to refuse entry to def, and record showed def had notice from prior understandings that he had no right to enter, and showed his surreptitious actions surrounding his entry; provisions of Family Code regarding joint management of property are not controlling in criminal prosecution. Davis v S, 799<8>398.

EVIDENCE INSUFF Evid was legally insuff to support conv for criminal trespass in city park, where city's unwritten policy delegating to police officers authority to ban persons from public parks at officers' discretion was unconstitutional violation of procedural due process, so def had effective consent to be at park at time of alleged offense, during its regular hours of operation. Anthony v S, 209<6>296 (2006)

In conv for criminal trespass, evid was insuff to prove def entered on c/w's property where witness identified on map where def was apprehended, there was no evid that the location identified was on c/w's property. Visosky v S, 953<13>819 (1997)

In pros for criminal trespass adjacent to abortion clinic, where state pled ownership and was required to prove allegation, evid was insuff where def was on adjacent property and was no evid as to who was title holder of property, who held easement in issue, boundaries of easement, or what type of easement existed, if any; evid only showed property was adjacent to clinic

and clinic's patients crossed the property to enter and exit clinic's parking lot. Langston v S, 855/718.

In pros for criminal trespass at abortion clinic, evid was insuff to prove c/w owned property where def was arrested, where he was arrested on a public easement and was no evid def was inside the line designated as the property line. Langston v S, 812<14>406.

Evid was insuff to support conv under 30.05 where def was arrested on college campus after having been given notice barring him from campus, but the notice by its terms would become null and void on def's readmission to the college, and there was uncontroverted evid that he was enrolled as a student at the time of alleged offense. Bader v S, 777<13>178.

Evid was insuff to prove lack of effective consent where evid showed a bona fide disputed existed between def and c/w over ownership of land on which offense was allegedly committed. Hann v S, 771<2>731.