

**BROOKS v. STATE**

Cite as 258 S.W.2d 317

Tex. 317

We must determine whether the paper cups, one of which smelled of beer, the broken, empty beer bottles and the fact that such were found in a place of business constitute direct or circumstantial evidence of guilt of the charge against the appellant.

We have concluded that such facts were circumstances rather than direct proof of the fact that appellant had the beer for sale and that, therefore, the learned trial court fell into error in not giving the requested charge. *Miller v. State*, 135 Tex.Cr.R. 309, 119 S.W.2d 1052, and *Hinton v. State*, 135 Tex.Cr.R. 400, 120 S.W.2d 1053.

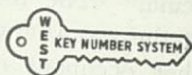
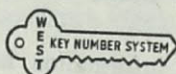
The judgment is reversed and the cause remanded.

purpose of sale, and his punishment was assessed by the jury at a fine of \$250.

The complaint and information, as well as all matters of procedure, appear regular. The record is before us without a statement of facts or bills of exception, in the absence of which nothing is presented for review.

The judgment of the trial court is affirmed.

Opinion approved by the Court.

**BROOKS v. STATE.**

No. 26458.

Court of Criminal Appeals of Texas.

May 27, 1953.

**YANCY v. STATE.**

No. 26463.

Court of Criminal Appeals of Texas.

May 27, 1953.

Defendant was convicted of possessing intoxicating liquor for the purpose of sale. The County Court, Childress County, Richard D. Bird, J., rendered judgment on the verdict, and defendant appealed. The Court of Criminal Appeals, Belcher, C., held that nothing is presented for review, in the absence of a statement of facts or bills of exception, where the complaint, information, and all matters of procedure appear regular.

Judgment affirmed.

**Criminal Law** ¶1090(1)

Where complaint, information and all matters of procedure appear regular and record on appeal from conviction contains no statement of facts or bills of exception, nothing is presented for review.

From a judgment rendered by the County Court, Culberson County, defendant appealed. The Court of Criminal Appeals, Belcher, C., held that information, charging defendant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense.

Reversed with directions.

**Automobiles** ¶351

Information, charging defendant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense. *Vernon's Ann. Civ.St. art. 6687b, § 27.*

George W. Walker, Van Horn, for appellant.

Wesley Dice, State's Atty., of Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted for the violation of Art. 6687b, § 27, V.A.R.C.S.; and his punishment was assessed at a fine of \$50.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully drive and operate a motor vehicle upon a public

No attorney on appeal for appellant.

Wesley Dice, State's Atty., of Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted for the offense of possessing intoxicating liquor for the



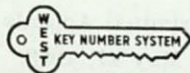
highway, to-wit: U. S. Highway Number 80, situated within said county and state, while his, the said Keith Brook's, drivers license was suspended."

In *Hassell v. State*, 149 Tex.Cr.R. 333, 194 S.W.2d 400, 401, we said:

"There being no such license as a 'driver's' license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense." See also *Holloway v. State*, Tex.Cr.App., 237 S.W.2d 303.

Because the information fails to charge an offense, the judgment is reversed and the prosecution ordered dismissed.

Opinion approved by the Court.



### **BOROQUEZ v. STATE.**

No. 26447.

Court of Criminal Appeals of Texas.

June 3, 1953.

Defendant was convicted of the wilful burning of the house of his mother. The District Court, El Paso County, Roy D. Jackson, J., entered judgment, and defendant appealed. The Court of Criminal Appeals, Davidson, C., held that the evidence sustained conviction.

Judgment affirmed.

#### **Arson §37(1)**

Evidence sustained conviction of the wilful burning of the house of defendant's mother.

Richard C. White and Richard Burges Perrenot, El Paso, for appellant.

William E. Clayton, Dist. Atty., Owen H. Ellington, Asst. Dist. Atty., C. Rutledge Isaacks, Asst. Dist. Atty., El Paso, Wesley Dice, State's Atty., of Austin, for the State.

DAVIDSON, Commissioner.

Appellant, who a few months prior had been honorably discharged from the army, occupied, with his mother, Josefa Alpuente, one room of a five-room house. The remainder of the house was occupied by two other parties and their families.

Appellant stands here convicted of the wilful burning of the house of Josefa Alpuente, with punishment assessed at three years in the penitentiary.

The sufficiency of the evidence to support the conviction is challenged.

Shortly after midnight, appellant came home drunk. He awakened his mother and began teasing her and, as she testified, acting "like Dracula." The mother became frightened, left the room, and went to the room of another occupant of the house. She later went to the house of a neighbor. About the time she left the house, appellant was seen carrying some personal effects and a small table out of the room, from which smoke was issuing.

Alvarez, a special officer, testified that when he arrived at the scene of the fire appellant was standing in front of the house watching the fire. Upon his asking if there was any one in the house, appellant replied, "I don't give a damn if the whole place burns down with everybody in it." The witness further testified that appellant made no effort to help in getting people out of the burning house.

The fire was confined to the one room of house and was soon put out.

A strong odor of kerosene permeated appellant's clothing when he was apprehended at the fire. There was also a strong odor of kerosene in the room as well as on the mattress and bedclothes, and kerosene was found at different places on the floor.

The mother testified that she kept a brown gallon-bottle of kerosene on a shelf in the room, which she used in a lantern and also to burn trash in the back yard.

It is upon these facts that this conviction rests.

The jury disregarded the appellant's defense that the burning of the room was accidental and not the result of any wilful