

By: Middleton

S.B. No. 2563

A BILL TO BE ENTITLED

AN ACT

relating to the admissibility of certain evidence against a defendant in a criminal case.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 38.23, Code of Criminal Procedure, is amended to read as follows:

Art. 38.23. EXCLUSIONARY RULE [~~EVIDENCE NOT TO BE USED~~].

(a) Notwithstanding any other law, evidence that is otherwise admissible may not be excluded as evidence against a defendant on the basis that the [No] evidence was obtained [by an officer or other person] in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, unless:

(1) the evidence was intentionally obtained or obtained by deliberate, reckless, or grossly negligent conduct or by recurring or systemic negligence, in violation of the constitution of the United States as interpreted by the United States Supreme Court; and

(2) a ruling of the United States Supreme Court compels the exclusion or suppression of that evidence, and there is no reasonable grounds for distinguishing that ruling factually or legally. [~~shall be admitted in evidence against the accused on the trial of any criminal case.~~

~~[In any case where the legal evidence raises an issue~~

1 ~~hereunder, the jury shall be instructed that if it believes, or has~~  
2 ~~a reasonable doubt, that the evidence was obtained in violation of~~  
3 ~~the provisions of this Article, then and in such event, the jury~~  
4 ~~shall disregard any such evidence so obtained].~~

5       (b) Notwithstanding any other law, the attorney  
6 representing the state is entitled to an interlocutory appeal under  
7 Article 38.24 of an order under [~~It is an exception to the~~  
8 ~~provisions of]~~ Subsection (a) of this article [~~Article that the~~  
9 ~~evidence was obtained by a law enforcement officer acting in~~  
10 ~~objective good faith reliance upon a warrant issued by a neutral~~  
11 ~~magistrate based on probable cause].~~

12       (c) This article may not be construed to preclude or in any  
13 way limit the ability of a defendant to bring an action for damages  
14 incurred as a result of a violation of the defendant's rights under  
15 the Fourth Amendment to the United States Constitution, as made  
16 applicable to the states through the United States Supreme Court's  
17 interpretation of the Fourteenth Amendment to the United States  
18 Constitution, or Section 9, Article I, Texas Constitution.

19       SECTION 2. Chapter 38, Code of Criminal Procedure, is  
20 amended by adding Article 38.24 to read as follows:

21       Art. 38.24. INTERLOCUTORY APPEAL. (a) Notwithstanding any  
22 other law, the attorney representing the state is entitled to  
23 interlocutory appeal directly to the Texas Court of Criminal  
24 Appeals from any order excluding or suppressing evidence on the  
25 basis that it was obtained in violation of any provisions of the  
26 Constitution or laws of the State of Texas, or of the Constitution  
27 or laws of the United States of America.

1       (b) The state may appeal under this article even if a ruling  
2 from the United States Supreme Court compels the exclusion or  
3 suppression of the disputed evidence, and the state may appeal for  
4 the purpose of seeking reconsideration of the United States Supreme  
5 Court ruling on a petition for a writ of certiorari.

6       (c) To appeal under this article, the attorney representing  
7 the state must:

8           (1) file a notice of appeal not later than the 14th day  
9 after the date of the order under Article 38.23(a); and

10          (2) if applicable, indicate in the notice of appeal  
11 that:

12                   (A) a ruling from the United States Supreme Court  
13 compels the exclusion or suppression of the disputed evidence; and

14                   (B) the appeal is taken solely for the purpose of  
15 seeking reconsideration of that United States Supreme Court ruling  
16 on a petition for a writ of certiorari.

17       (d) The filing of a notice of appeal under this article  
18 automatically stays the proceeding until the appeal is fully  
19 resolved.

20       (e) The Texas Court of Criminal Appeals shall expedite the  
21 consideration of any appeal under this article.

22       (f) The Texas Court of Criminal Appeals shall summarily  
23 affirm the order, without requesting a briefing on the merits or  
24 holding an oral argument, if it concludes or the attorney  
25 representing the state concedes that a ruling from the United  
26 States Supreme Court compels the exclusion or suppression of the  
27 disputed evidence.

1       (g) The attorney representing the state may petition for a  
2 writ of certiorari to the United States Supreme Court from any  
3 decision of the Texas Court of Criminal Appeals affirming the  
4 exclusion or suppression of evidence. If the attorney representing  
5 the state petitions for a writ of certiorari, the stay of  
6 proceedings required by Subsection (d) remains in effect until the  
7 petition is finally disposed.

8       SECTION 3. The change in law made by this Act applies only  
9 to a criminal proceeding that commences on or after the effective  
10 date of this Act. A criminal proceeding that commenced before the  
11 effective date of this Act is governed by the law in effect on the  
12 date the proceeding commenced, and the former law is continued in  
13 effect for that purpose.

14       SECTION 4. This Act takes effect September 1, 2023.