

AN ACT

relating to the disposition of property alleged to have been illegally acquired and to the use of the photographic evidence of that property in a criminal action.

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

SECTION 1. Article 38.34, Code of Criminal Procedure, is amended to read as follows:

Art. 38.34. PHOTOGRAPHIC EVIDENCE IN THEFT CASES. (a) In this article [~~As used herein~~], [~~the term~~] "property" means any tangible personal property [~~offered for sale or lease by a person engaged in the business of selling goods or services to buyers~~].

(b) A photograph of property that [~~which~~] a person is alleged to have unlawfully appropriated with the intent to deprive the owner of the [~~such~~] property is admissible into evidence under rules of law governing the admissibility of photographs. The [~~and such~~] photograph is as admissible in evidence as is the property itself.

(c) The provisions of Article 18.16 [~~of this code~~] concerning the bringing of stolen property before a magistrate for examination are complied with if a photograph of the stolen property is brought before the magistrate.

(d) The defendant's rights of discovery and inspection of tangible physical evidence are satisfied if a photograph of the [~~tangible~~] property is made available to the defendant by the state

1 on [~~upon~~] order of any court having jurisdiction over the cause.

2 SECTION 2. Article 47.02, Code of Criminal Procedure, is
3 amended to read as follows:

4 Art. 47.02. RESTORED ON TRIAL. (a) On [~~Upon~~] the trial of
5 any criminal action for theft~~[,]~~ or [~~for~~] any other offense
6 involving the illegal acquisition of property [~~which is by law a~~
7 ~~penal offense~~], the court trying the case shall order the property
8 to be restored to the person appearing by the proof to be the owner
9 of the property [~~same~~].

10 (b) On written consent of the prosecuting attorney, any
11 magistrate having jurisdiction in the county in which a [~~Likewise,~~
12 ~~the judge of any court in which the trial of any~~] criminal action
13 for theft or any other offense involving the illegal acquisition of
14 property [~~which is by law a penal offense~~] is pending may hold a~~[,~~
15 ~~upon~~] hearing to determine the right to possession of the property.
16 If~~[, if]~~ it is proved to the satisfaction of the magistrate [~~judge~~
17 ~~of said court~~] that any person is a true owner of the property
18 alleged to have been stolen, and the property [~~which~~] is under the
19 control [~~in possession~~] of a peace officer, the magistrate may, by
20 written order, direct the property to be restored to that person
21 [~~such owner~~].

22 [~~As to property subject to the Certificate of Title Act~~
23 ~~(Chapter 501, Transportation Code), any magistrate having~~
24 ~~jurisdiction in the county in which the criminal action is pending~~
25 ~~may hold a hearing to determine the right to possession of the~~
26 ~~property, even if a criminal action is pending, upon written~~
27 ~~consent of the prosecuting attorney.]~~

1 SECTION 3. The changes in law made by this Act apply only to
2 a criminal action filed on or after the effective date of this Act
3 and to the admissibility of evidence in that action. A criminal
4 action filed before the effective date of this Act and the
5 admissibility of evidence in that action are covered by the law in
6 effect when the action was filed, and the former law is continued in
7 effect for that purpose.

8 SECTION 4. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 796 was passed by the House on May 1, 2009, by the following vote: Yeas 138, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 796 was passed by the Senate on May 26, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor