

By: Smith of Tarrant

H.B. No. 796

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the disposition of property alleged to have been
3 illegally acquired and to the use of the photographic evidence of
4 that property in a criminal action.

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

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

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

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

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

22 (d) The defendant's rights of discovery and inspection of
23 tangible physical evidence are satisfied if a photograph of the
24 [~~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.