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

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

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

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

Art. 38.24.  INTERLOCUTORY APPEAL. (a) Notwithstanding any other law, the attorney representing the state is entitled to interlocutory appeal directly to the Texas Court of Criminal Appeals from any order excluding or suppressing evidence on the basis that it was obtained 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.

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

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

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

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

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

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

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

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

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

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

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

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