



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-15-00095-CR

ADEEL SIDDIQ

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 16TH DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. F-2014-0481-A

DISSENTING OPINION

I must respectfully dissent from the decision of the conscientious majority for the following reasons:

1. I do not understand the majority's reliance on the federal police exception to the prohibition against wiretaps to override the Texas prohibition against wiretaps that lack both judicial approval and consent by a party to the conversation.

2. Although there is no suggestion that Appellant's father knew that his conversation with his son was being recorded, is the majority saying that Appellant had notice that his call was being recorded when one warning sign was at the blood-draw room and the other warning sign was behind him (and more than seven feet high) when he was at the book-in desk where he made the phone call?
3. Is the testimony that the blood was not drawn in compliance with proper blood-draw procedures irrelevant because the blood was drawn for the purpose of criminal prosecution?
4. If the admissibility of both the recording of the telephone conversation and the blood-draw results was governed by article 38.23 of the code of criminal procedure, why was Appellant not entitled to an article 38.23 instruction to properly guide the jury?

"Clearly, whether evidence has been illegally obtained is a different and separate question from whether an exclusionary rule should apply."¹ The federal rule does not necessarily govern the Texas rule. Texas may grant greater, although not lesser, protection to a person accused of committing a crime.²

¹*State v. Daugherty*, 931 S.W.2d 268, 272 (Tex. Crim. App. 1996).

²*Hernandez v. State*, 988 S.W.2d 770, 775 (Tex. Crim. App. 1999).

The legislature's mandate in article 38.23 is clear and unequivocal,³ and Appellant was entitled to the instruction he requested in both instances. Because the majority does not so hold, I must respectfully dissent.

/s/ Lee Ann Dauphinot

LEE ANN DAUPHINOT
JUSTICE

PUBLISH

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³See Tex. Code Crim. Proc. Ann. art. 38.23(a) (West 2005).