

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 441

6
7 S.P. 150

In Senate, February 1, 1983

8 Referred to the Committee on Judiciary, sent down for concurrence and
9 ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

11 Presented by Senator Collins of Knox.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Concerning the Admissibility of
18 Evidence under the Exclusionary Rule.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 15 MRSA §1205 is enacted to read:

23 §1205. Admissibility of evidence obtained as result
24 of unlawful search or seizure

25 1. Request for admission of unlawfully seized
26 evidence. If a party in a proceeding, whether civil
27 or criminal, seeks to exclude evidence from the trier
28 of fact because of the conduct of a law enforcement
29 officer in obtaining the evidence, the proponent of
30 the evidence may urge that the law enforcement
31 officer's conduct was taken in a reasonable, good
32 faith belief that the conduct was proper, and that
33 the evidence discovered should not be kept from the
34 trier of fact if otherwise admissible.

1 2. Exclusion of evidence prohibited; limita-
2 tions. No court may suppress evidence which is
3 otherwise admissible in a civil or criminal proceed-
4 ing if the evidence was seized in good faith or as a
5 result of a technical violation.

6 3. Definition of evidence. "Evidence" means
7 contraband, instrumentalities or fruits of a crime
8 or any other evidence which tends to prove a fact in
9 issue.

10 4. Definition of good faith. "Good faith" means
11 whenever a law enforcement officer obtains evidence:

12 A. Pursuant to a search warrant obtained from a
13 neutral and detached magistrate, which warrant is
14 free from obvious defects other than
15 nondeliberate errors in preparation and the offi-
16 cer reasonably believed the warrant to be valid;

17 B. Pursuant to a warrantless search, when:

18 (1) The officer reasonably believed he pos-
19 sessed probable cause to make the search;

20 (2) The officer possessed at least a
21 reasonable suspicion that the person or
22 premises searched, possessed or contained
23 items of an evidentiary nature; and

24 (3) The officer reasonably believed there
25 were circumstances excusing the procurement
26 of a search warrant;

27 C. Pursuant to a search resulting from an
28 arrest, when:

29 (1) The officer reasonably believed he pos-
30 sessed probable cause to make the arrest;

31 (2) The officer reasonably believed there
32 were circumstances excusing the procurement
33 of an arrest warrant; or

34 (3). The officer procured or executed an
35 invalid arrest warrant he reasonably
36 believed to be valid; or

1 D. Pursuant to a statute, local ordinance, judi-
2 cial precedent or court rule which is later
3 declared unconstitutional or otherwise invali-
4 dated.

5 5. Definition of law enforcement officer. For
6 purposes of this section, "law enforcement officer"
7 means any person who, by virtue of his public employ-
8 ment, is vested by law with a duty to maintain public
9 order, prosecute offenders or make arrests for
10 crimes, whether that duty extends to all crimes or is
11 limited to specific crimes, and who has completed a
12 law enforcement academy or other approved prerequi-
13 site curriculum and any mandatory subsequent training
14 or instruction in constitutional law and criminal
15 procedure, where required.

16 6. Other rights unaffected. This section shall
17 not adversely affect the rights of any plaintiff to
18 seek special damages against a law enforcement offi-
19 cer or a governmental entity, provided that the trier
20 of fact in that civil action determines that the
21 officer or entity conducted an unlawful search or
22 seizure.

23

STATEMENT OF FACT

24 The so-called "exclusionary rule" is a judicially
25 developed rule requiring that any evidence seized
26 from a defendant in a criminal investigation in
27 violation of his constitutional rights is inadmis-
28 sible evidence in a subsequent criminal trial. The
29 rule was developed in 1961. Its purpose is to deter
30 and punish police "misconduct" - the seizure of evi-
31 dence in violation of a defendant's constitutional
32 rights.

33 The effect of the application of the exclusionary
34 rule has been to exclude valuable and probative evi-
35 dence that was improperly obtained due to good faith
36 mistakes by honest and conscientious police officers.
37 The result has been that guilty defendants have gone
38 free because the evidence needed to convict them has
39 been excluded from the jury or trier of fact.

1 The purpose of this bill is to carve out a narrow
2 exception to the exclusionary rule by allowing evi-
3 dence to be admitted that was seized improperly due
4 to a good faith mistake by a properly trained police
5 officer. The belief by a newly-hired police officer
6 who had not yet been schooled through the Maine Crim-
7 inal Justice Academy, that he was acting in good
8 faith in seizing evidence, later determined to have
9 been improperly seized, would be insufficient to
10 permit that evidence to be admitted under this bill.

11 Both Colorado and Arizona have enacted bills
12 similar to this bill.

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