S T A T E  O F  N E W  Y O R K

1881

2009-2010 Regular Sessions

I N  A S S E M B L Y

January 14, 2009

Introduced by M. of A. CALHOUN, ALFANO, CROUCH, KOLB, TOWNSEND -- Multi-Sponsored by -- M. of A. BACALLES, BUTLER, CONTE, ERRIGO, FINCH, MILLER, OAKS, SAYWARD, TEDISCO -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to preventing the suppression of evidence where the police have acted in good faith

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 710.20 of the criminal procedure law, as amended by chapter 8 of the laws of 1976, subdivision 2 as amended and subdivision 7 as added by chapter 744 of the laws of 1988, subdivision 3 as amended by chapter 214 of the laws of 1982, subdivision 5 as amended by chapter 629 of the laws of 1998 and subdivision 6 as renumbered by chapter 481 of the laws of 1983, is amended to read as follows:

S 710.20 Motion to suppress evidence; in general; grounds for.

Upon motion of a defendant who (a) is aggrieved by unlawful or improper acquisition of evidence and has reasonable cause to believe that such may be offered against him OR HER in a criminal action, or (b) claims that improper identification testimony may be offered against him OR HER in a criminal action, a court may, under circumstances prescribed in this article, order that such evidence be suppressed or excluded upon the ground that it:

1. Consists of tangible property obtained by means of an unlawful search and seizure under circumstances precluding admissibility thereof in a criminal action against such defendant; or

2. Consists of a record or potential testimony reciting or describing declarations, conversations, or other communications overheard, intercepted, accessed, or recorded by means of eavesdropping, or observations made by means of video surveillance, obtained under circumstances precluding admissibility thereof in a criminal action against such defendant; or

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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3. Consists of a record or potential testimony reciting or describing a statement of such defendant involuntarily made, within the meaning of section 60.45; or

4. Was obtained as a result of other evidence obtained in a manner described in subdivisions one, two and three; or

5. Consists of a chemical test of the defendant's blood administered in violation of the provisions of subdivision three of section eleven hundred ninety-four of the vehicle and traffic law, subdivision eight of section forty-nine-a of the navigation law, subdivision seven of section 25.24 of the parks, recreation and historic preservation law, or any other applicable law; or

6. Consists of potential testimony regarding an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case, which potential testimony would not be admissible upon the prospective trial of such charge owing to an improperly made previous identification of the defendant by the prospective witness[.]; OR

7. Consists of information obtained by means of a pen register or trap and trace device installed or used in violation of the provisions of article seven hundred five of this chapter.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVIDENCE SHALL NOT BE SUPPRESSED IF THE COURT SHALL DETERMINE THAT SUCH EVIDENCE WAS OBTAINED BY POLICE OFFICERS WHO WERE ACTING IN GOOD FAITH IN ATTEMPTING TO COMPLY WITH THE LAW WHEN THEY OBTAINED SUCH EVIDENCE.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.