

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2192

By: Graves

AS INTRODUCED

An Act relating to criminal procedure; creating the Exclusionary Rule Act; providing short title; defining terms; providing procedure for suppression of certain evidence; providing for delivery of certain property or matter if motion is sustained; allowing proponent of evidence to assert good faith claim; prohibiting exclusion of certain evidence; clarifying scope of Exclusionary Rule Act in regards to rights of plaintiffs; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 756 of Title 22, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Exclusionary Rule Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 757 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in the Exclusionary Rule Act:

1. "Evidence" means contraband, instrumentations or fruits of a crime, or any other evidence that tends to prove a fact in issue; and

2. "Good faith" means whenever a peace officer obtains evidence:

- a. pursuant to a search warrant obtained from a neutral and detached circuit court or associate circuit court judge, which is free from obvious defects other than nondeliberate errors in preparation, and the officer reasonably believed the warrant to be valid,
- b. pursuant to a warrantless search, when:
 - (1) the officer reasonably believed he possessed probable cause to make the search,
 - (2) the officer possessed at least a reasonable suspicion that the person or premises searched possessed or contained items of an evidential nature, and
 - (3) the officer reasonably believed there were circumstances excusing the procurement of a search warrant,
- c. pursuant to a search resulting from an arrest, when:
 - (1) the officer reasonably believed he possessed probable cause to make the arrest,
 - (2) the officer reasonably believed there were circumstances excusing the procurement of an arrest warrant, or
 - (3) the officer procured or executed an invalid arrest warrant he reasonably believed to be valid, or
- d. pursuant to law, local ordinance, judicial precedent, or court rule which is later declared unconstitutional or otherwise invalidated.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 758 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. A person aggrieved by an unlawful seizure made by an officer and against whom there is a pending criminal proceeding growing out of the subject matter of the seizure may file a motion to suppress the use in evidence of the property or matter seized. For the purposes of this section, a pending criminal proceeding shall mean any criminal investigation subject matter in seeking an indictment or information.

B. The motion to suppress shall be in writing. It shall be filed with the court in which there is pending against the moving party a criminal proceeding growing out of the subject matter of the seizure.

C. The motion shall be made before the commencement of the trial of the moving party on the charge arising out of the seizure unless he or she was unaware of the grounds or had no opportunity to do so before the trial. In that event, the motion may be made during the trial. However, the trial judge may in his or her discretion entertain a motion any time during trial. Notice shall be given to the prosecuting attorney of the date, time, place and nature of the hearing.

D. The motion to suppress may be based upon any one or more of the following grounds:

1. That the search and seizure were made without warrant and without lawful authority;

2. That the warrant was improper upon its face or was illegally issued, including the issuance of a warrant without proper showing of probable cause;

3. That the property seized was not that described in the warrant and that the officer was not otherwise lawfully privileged to seize the same;

4. That the warrant was illegally executed by the officer; or

5. That in any other manner the search and seizure violated the right of the moving party under the Fourth and Fourteenth Amendments of the Constitution of the United States.

E. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. The burden of proof shall be upon the state to show a preponderance of the evidence that the motion to suppress should be overruled.

F. If the motion is sustained, the judge shall order the property or matter delivered to the moving party, unless its retention is authorized or required by any other law of this state.

G. If a party in a proceeding, whether civil or criminal, seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if otherwise admissible.

H. No court shall suppress evidence that is otherwise admissible in a civil or criminal proceeding if the evidence was seized in good faith or as a result of a technical violation.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 759 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Exclusionary Rule Act shall not adversely affect the rights of any plaintiff to seek special damages against a peace officer or a governmental entity, provided that the trier of fact in such civil action determines that the officer or entity conducted an unlawful search or seizure.

SECTION 5. This act shall become effective September 1, 1994.

