

CONSTITUTIONALITY

For information regarding constitutionality of this section, as added by section 701(a) of Pub. L. 90-351, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

1968—Subsec. (c). Pub. L. 90-578 substituted “magistrate” for “commissioner” wherever appearing.

CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” wherever appearing in subsec. (c) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3502. Admissibility in evidence of eye witness testimony

The testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is being tried shall be admissible in evidence in a criminal prosecution in any trial court ordained and established under article III of the Constitution of the United States.

(Added Pub. L. 90-351, title II, § 701(a), June 19, 1968, 82 Stat. 211.)

[§ 3503. Repealed. Pub. L. 107-273, div. B, title IV, § 4002(c)(3)(A), Nov. 2, 2002, 116 Stat. 1809]

Section, added Pub. L. 91-452, title VI, § 601(a), Oct. 15, 1970, 84 Stat. 934, related to depositions to preserve testimony.

§ 3504. Litigation concerning sources of evidence

(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States—

(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act;

(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1968, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, shall not be required unless such information may be relevant to a pending claim of such inadmissibility; and

(3) no claim shall be considered that evidence of an event is inadmissible on the ground that such evidence was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, if such event occurred more than five years after such allegedly unlawful act.

(b) As used in this section “unlawful act” means any act the use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title) in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto.

(Added Pub. L. 91-452, title VII, § 702(a), Oct. 15, 1970, 84 Stat. 935.)

CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 91-452, title VII, § 701, Oct. 15, 1970, 84 Stat. 935, provided that: “The Congress finds that claims that evidence offered in proceedings was obtained by the exploitation of unlawful acts, and is therefore inadmissible in evidence, (1) often cannot reliably be determined when such claims concern evidence of events occurring years after the allegedly unlawful act, and (2) when the allegedly unlawful act has occurred more than five years prior to the event in question, there is virtually no likelihood that the evidence offered to prove the event has been obtained by the exploitation of that allegedly unlawful act.”

APPLICABILITY TO PROCEEDINGS

Pub. L. 91-452, title VII, § 703, Oct. 15, 1970, 84 Stat. 936, provided that: “This title [enacting this section and provisions set as notes under this section] shall apply to all proceedings, regardless of when commenced, occurring after the date of its enactment [Oct. 15, 1970]. Paragraph (3) of subsection (a) of section 3504, chapter 223, title 18, United States Code, shall not apply to any proceeding in which all information to be relied upon to establish inadmissibility was possessed by the party making such claim and adduced in such proceeding prior to such enactment.”

§ 3505. Foreign records of regularly conducted activity

(a)(1) In a criminal proceeding in a court of the United States, a foreign record of regularly conducted activity, or a copy of such record, shall not be excluded as evidence by the hearsay rule if a foreign certification attests that—

(A) such record was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) such record was kept in the course of a regularly conducted business activity;

(C) the business activity made such a record as a regular practice; and

(D) if such record is not the original, such record is a duplicate of the original;

unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

(2) A foreign certification under this section shall authenticate such record or duplicate.

(b) At the arraignment or as soon after the arraignment as practicable, a party intending to offer in evidence under this section a foreign record of regularly conducted activity shall provide written notice of that intention to each other party. A motion opposing admission in evidence of such record shall be made by the opposing party and determined by the court before trial. Failure by a party to file such motion before trial shall constitute a waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

(c) As used in this section, the term—

(1) “foreign record of regularly conducted activity” means a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, maintained in a foreign country;

(2) “foreign certification” means a written declaration made and signed in a foreign country by the custodian of a foreign record of reg-