



FUGITIVE INVESTIGATIONS

Criminal Investigations

ARRESTS

8.4 Probable Cause

- A. Definition:** Probable cause is defined by the totality of the facts and circumstances, based in reasonably trustworthy information, which warrants a person of reasonable caution to believe that an offense has been or is being committed by the person to be arrested or the contraband or evidence of crime would be found in a particular place or on a particular person.
- B. Facts and Circumstances**
1. Probable cause must be based upon specific, articulable facts and circumstances
 2. Probable cause cannot be based upon mere suspicions or upon a deputy's educated guess. Unfounded conclusions cannot be used to establish probable cause.
 3. Any facts and circumstances which are logically relevant can be used to establish probable cause. The exception is information which is the result of prior illegal Government activity.
 4. Include as much detail as practicable when stating probable cause.
- C. Logical Inferences**
1. The probable cause determination is based upon everyday logic and common sense. The logical inferences which can be drawn from the facts and circumstances by a person of reasonable caution are included in the probable cause determination. The facts and circumstances must logically make it "probable" that seizable property is located in a particular place. Absolute certainty is not required. Proof beyond a reasonable doubt is not required; probability is enough.
 2. **Time Affects Probability:** The passage of time affects the decision of whether there is probable cause to search. Since the existence of probable cause to search is logically affected by the passage of time, you must include the date and time of occurrence for each of the facts and circumstances you rely upon. The preferred method of stating the facts and circumstances is in chronological order.
- D. Professional Inferences: the Reasonable Deputy Standard**
1. Logical inferences drawn by a deputy based upon his or her expertise, training, or experience can be used to establish probable cause.
 2. One very important limitation on the use of professional inferences to establish probable cause: You must be able to articulate the expertise, training, and experience on which you base professional inferences.
 3. A deputy will be required to set forth the probable cause, either in an affidavit in support of a warrant or in a suppression hearing, and a judicial officer will review it. The judicial officer may

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not have the benefit of the deputy's special training, therefore, the judicial officer will draw logical inferences from the facts. If the judicial officer is to draw professional inferences from the facts, the deputy will have to advise him or her of the special experiences and training that support his or her professional judgments.

E. The Probable Cause Mixture

1. Probable cause is based upon all facts and circumstances available to a deputy, the logical inferences that can be drawn from these facts, and any professional inferences drawn by the deputy. However, the deputy must be able to articulate his or her basis for a professional inference.
2. Probable cause does not hinge on any individual fact. Probable cause is the sum total of layers of information and the synthesis of what the deputies have heard, what they know, and what they observe as trained officers. This is not based on individual layers of information, but on the laminated total.

F. Establishing Probable Cause to Search: When the Government conducts a search, it must be reasonable under the 4th Amendment. The courts have held that a search is presumed to be reasonable, if it is supported by both probable cause to search and a search warrant. Therefore, in analyzing any search and seizure problem, it must be determined whether or not there is probable cause to search.

1. **General:** Probable cause can be established either through the personal knowledge of the deputy or through information provided to the deputy by a third party, usually an informant.
2. **Observational Probable Cause:** This is the most common method of determining probable cause. The deputy can establish probable cause through his or her own observations.
3. **Informational Probable Cause:** Informational probable cause is generally established through hearsay, provided the hearsay is trustworthy. Informational probable cause is usually established from two basic sources:
 - a. official law enforcement channels; and
 - b. other individuals who have information about the criminal offense. Information provided from these sources will generally have to be scrutinized to determine the informant's credibility and basis of knowledge (reliability), and the information may have to be corroborated by other sources or further investigation.
4. **Law Enforcement Channels:** Search warrants based on information from police officers, police reports, or other law enforcement reports are presumed to be credible and may be used to establish probable cause; however the person who obtained the information must be made available to testify at further court proceedings.
5. **Victims:** When the victim of a criminal offense relates the details of the crime to a deputy and there is reason to believe that the crime has been committed, the victim is presumed to be credible and information is presumed to be reliable. Thus, an arrest may be made or a search warrant can be obtained without having to corroborate the victim's statements. However, if the purported "victim" of a crime is also involved in criminal conduct, corroboration is necessary before a search warrant can be obtained.
6. **Citizens:** A citizen informant is a person who provides information to law enforcement officers and is not involved in criminal activity.
 - a. Citizen informants are presumed to be credible and generally, corroboration is not necessary to establish probable cause.
 - b. While the deputy is not required to investigate the background, character, or mental capacity of a citizen informant before acting on information provided by the citizen, he or she should obtain the name of the citizen and verify, in some fashion, that the citizen is trustworthy and not merely attempting to gain revenge on a subject.

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- c. The deputy must be prepared to demonstrate that the citizen is reliable and has personal knowledge of the probable cause information that is necessary to issue the warrant.

7. **Confidential Reliable Informants (CRI):** The CRI is often deeply involved in criminal activity. However, if the CRI has not given false or misleading information in the past, and has given information previously that has led to arrests of individuals, the CRI is considered reliable and his or her uncorroborated information is sufficient probable cause for issuance of a search warrant. Prerequisites for a search warrant on the basis of a CRI are as follows:

- a. The affidavit must allege the CRI's statement in factual language and must establish that the CRI has spoken from personal knowledge.
- b. The affidavit must contain some underlying factual information from which the U.S. Magistrate Judge can conclude that the information is reliable.
- c. While cases have held that a CRI was reliable even though he or she had never given previous information to deputies, the general rule to follow is:
 - (1) The informant must have never given false or misleading information to any law enforcement personnel; and
 - (2) The information provided must be current information recently obtained by the CRI.

8. **Untested Informants:** Untested informants generally fall into two categories:

- a. The anonymous untested informant; and
- b. The known untested informant who has been arrested on criminal charges. When the deputy receives information from untested informants, the deputy may investigate further based on that information. However, the deputy should corroborate the information given by the untested informant before a search warrant can be issued.

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