

District 12

Quick Tip No. 5

Probable cause is simply a fair probability.

While there have been complicated definitions of probable cause, simply think of probable cause as a fair probability. In other words, don't ask yourself, *Is the smell of fresh marijuana PC to search a car?* Instead ask, *When I smell fresh marijuana, is there a fair probability that the car contains evidence of marijuana use?*

Legal Supplement: “Probable cause to search a vehicle is established if, under the ‘totality of the circumstances[.]’ there is a ‘fair probability’ that the car contains contraband or evidence.” *U.S. v. Downs*, 151 F.3d 1301 (10th Cir. 1998). “A practical nontechnical probability that incriminating evidence is involved is all that is required.” *Texas v. Brown*, 103 S.Ct. 1535 (1983). Contrary to what its name might seem to suggest, probable cause demands even less than a probability.” *Woods v. City of Chicago*, 234 F.3d 979, 996 (7th Cir. 2000). “Although the fair probability must certainly be more than a bare suspicion . . . our court has rejected the notion that the government must show that a reasonable person would have thought by a preponderance of the evidence, that a defendant committed a crime . . . In short, the requisite fair probability is something more than a bare suspicion, but need not reach the fifty percent mark.” *U.S. v. Garcia*, 179 F. 3d 265, 268-69 (5th Cir. 1999). “[P]robable cause is a fluid concept-turning on the assessment of probabilities in particular factual contexts-not readily, or even usefully, reduced to neat set of legal rules. While an effort to fix some general, numerically precise degree of certainty corresponding to probable cause may not be helpful, it is clear that only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause.” *Illinois v. Gates*, 103 S.Ct. 2317 (1983). Probable cause for a search warrant does not require an officer's suspicion about the presence of contraband to be more likely true than false. *U.S. v. Ruiz*, 664 F.3d 833 (10th Cir. 2012). “[P]robable cause may be founded upon hearsay...” *Lee v. State*, 1983 OK CR 41



Law Enforcement Quick Tips provided by

The Office of Matt Ballard

District Attorney for Rogers, Mayes, and Craig Counties