

# District 12

## Quick Tip No. 10

### Staleness

**There are no hard and fast rules for when probable cause becomes stale. In fact, staleness is just a part of probable cause itself. In other words, probable cause becomes “stale” simply when the information is so old that there is no longer a fair probability that the evidence is in the particular location.**

#### Legal Supplement

**Ongoing Drug Activity:** *U.S. v. Schaefer*, 87 F.3d 562 (1<sup>st</sup> Cir. 1996)(Information 2 years old was not stale when involving a suspect who was a “major player” in cartel activity and affidavit sought property which would likely be in service for years), *U.S. v. Hammond*, 351 F.3d 765 (6<sup>th</sup> Cir. 2003)(50 months information not stale in drug trafficking involving a secure operational base), *U.S. v. Iiland*, 254 F.3d 1264(10<sup>th</sup> Cir. 2001)(4 months not stale for drug trafficking ongoing for a considerable time), **Marijuana Cultivation:** *U.S. v. Greany*, 929 F.2d 523 (9<sup>th</sup> Cir. 1991)(1.2 to 2 years not stale involving information that informant had remodeled the suspect’s house for a marijuana grow), *U.S. v. Meyers*, 106 F.3d 936 (10<sup>th</sup> Cir. 1997)(5 month gap not stale in ongoing marijuana growing operation), *U.S. v. McKeever*, 5 F.3d 863 (5<sup>th</sup> Cir. 1993)(21 months not stale on indoor marijuana grow – *Note: This affidavit outlined how marijuana cultivators stagger planting in order to have a constant harvest of marijuana*), **Manufacturing:** *U.S. v. Leasure*, 319 F.3d 1092(9<sup>th</sup> Cir. 2003)(6 months not stale in complex manufacturing conspiracy), **Firearms:** *U.S. v. Horn*, 187 F.3d 781 (8<sup>th</sup> Cir. 1999)(Even information 3 years old may not be stale for someone suspected of illegal possession of a firearm – *Note: The court noted how firearm enthusiasts tend to retain their firearms*), **Robbery:** *U.S. v. Bowman*, 215 F.3d 951 (9<sup>th</sup> Cir. 2000)(10 months not stale in seeking instrumentalities of professional bank robber informant said was in planning phase of a new robbery), **Gambling:** *U.S. v. Tucker*, 638 F.2d 1292 (3<sup>rd</sup> Cir. 1997)(6 weeks not stale for gambling paraphernalia in ongoing activity) **Billing Fraud:** *U.S. v. Hooshmand*, 931 f.2d 725 (11<sup>th</sup> Cir. 1991)(11 months not stale as five of the doctor’s employees described an ongoing activity) *U.S. v. Henson*, 848 F.2d 1374(6<sup>th</sup> Cir. 1998)(1 year not stale in extensive odometer tampering scheme spanning over an extended period of time).



**Law Enforcement Quick Tips provided by**

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