District 12
Quick Tip No. 6

Reasonable Suspicion is much less demanding than probable cause.

Reasonable suspicion allows an officer to conduct a *Terry* stop. While it is difficult to exactly define what constitutes reasonable suspicion, the Supreme Court has said it is **"[A] less demanding standard than probable cause and requires considerably less than a preponderance of evidence …"**

Legal Supplement: "While 'reasonable suspicion' is a less demanding standard than probable cause and requires showing considerably less than a preponderance of evidence . . ." ***Illinois v. Wardlow*, 529 U.S. 119 (2000).** A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct. ***U.S. v. Arvizu*, 534 U.S. 266 (2002).** That the facts may not support a conclusion that Terrell actually violated the law is irrelevant; reasonable suspicion requires "a showing considerably less than preponderance of the evidence," Id. at 123, and may be justified on a quantum of evidence far less than that required to establish probable cause--a fortiori, far less than to establish guilt. ***United States v. Vercher*, 358 F.3d 1257 (10th Cir 2004)** "[I]n conjunction with other factors, criminal history *contributes powerfully to the reasonable suspicion calculus*." *White*, 584 F.3d at 951 (quoting *Santos*, 403 F.3d at 1132) (emphasis in original)." **Cited in *United States v. Simpson,* 609 F.3d 1140 (10th Cir. 2010).** "But in conjunction with other factors, criminal history contributes powerfully to the reasonable suspicion calculus*."* ***Id.*** A previous criminal history may also weigh in favor of an officer's reasonable suspicion of illegal activity. An individual's criminal record, by itself, is not a sufficient basis for reasonable suspicion. ***United States v. Davis*, 636 F.3d 1281 (10th Cir. 2011).** Extreme and persistent nervousness, however, "is entitled to somewhat more weight." *United States v. West*, 219 F.3d 1171, 1179 (10th Cir. 2000); *Williams*, 271 F.3d at 1268; *United States v. Zubia-Melendez*, 263 F.3d 1155, 1162 (10th Cir. 2001) (the court may still "defer to the ability of a trained law enforcement officer to distinguish between innocent and suspicious action" (internal quotation marks omitted)). The court examines specific indicia that the defendant's nervousness was extreme, rather than credit an officer's naked assertion. *See, e.g., Santos*, 403 F.3d at 1127 (pointing to the following factors: the defendant's changing the topic; swallowing hard; licking his lips which were quivering; and nervously stroking the top edge of the head liner of the patrol car with his hand). Cited in ***United States v. Simpson,* 609 F.3d 1140 (10th Cir. 2010).** "[E]xtreme nervousness is a relevant factor in the totality of the circumstances analysis." **Id.** "[I]t is well established that 'an officer's mistake of fact may support probable cause or reasonable suspicion . . . provided the officer's mistake of fact was objectively reasonable'." ***U.S. v. Karam*, 496 F.3d 1157 (10th Cir. 2007).**

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