Principles of Probable Cause

Articulating precisely what reasonable suspicion and probable cause mean is not possible.[1]

It is seldom a good idea to begin an article by admitting that its topic cannot be usefully defined. But when the subject is as notoriously imprecise as probable cause, it would be pointless to deny it. Even the Supreme Court has admitted that probable cause is an "elusive" and "somewhat abstract" concept that cannot be "fine-tuned."[2] In fact, the Seventh Circuit once tried to provide a helpful definition but eventually concluded that, when all is said and done, probable cause just means "having a good reason to act."[3]

Reasonable suspicion to detain is even more elusive. About the only thing we know for sure is that it "requires more than a naked hunch."[4] (Don't write that down. It's not on the test.)

This imprecision is not, however, a problem that needs to be corrected by the courts. This is because both probable cause and reasonable suspicion are ultimately conclusions drawn by officers from the evidence at hand, based on training, experience, logic, and a heavy dose of common sense. So, while there are no tidy rules for determining whether there is probable cause,[5] there are some principles that can ordinarily provide officers with a way to make the determination with a fair degree of consistency and accuracy. Note that most of these apply to both probable cause and reasonable suspicion to detain or pat search.

How Much "Probability" is Required?

The first thing that most people want to know about probable cause is how much probability is required? This is understandable because, as the Supreme Court observed, "in dealing with probable cause, as the very name implies, we deal with probabilities."[6] So, what is the required probability? Is it 75%? 60%? 51%?

According to the Supreme Court, all of those answers are wrong. That is because it has steadfastly refused to assign a probability percentage since it views probable cause as a nontechnical standard based on common sense, not mathematical precision.[7] "The probable cause standard," said the Court, "is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of circumstances."[8] Similarly, the Tenth Circuit observed, "Besides the difficulty of agreeing on a single number, such an enterprise would, among other things, risk diminishing the role of judgment based on situation-sense."[9] Still, we can provide a ballpark probability percentage for probable cause, but reasonable suspicion is hopeless.

Probable cause

It would be logical to assume that probable cause (also known as "reasonable cause"[10]) requires at least a 51% probability because anything less would not be "probable." While this is technically true, the Supreme Court has ruled that probable cause does not require "any showing that such belief be correct

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[1] *Ornelas v. United States* (1996) 517 U.S. 690, 695. Also see *U.S. v. Jones* (1st Cir. 2012) 700 F.3d 615, 621.
[2] See *United States v. Cortez* (1981) 449 U.S. 411, 417 ["elusive"]; *United States v. Arvizu* (2002) 534 U.S. 266, 274 ["somewhat abstract"]; *Ornelas v. United States* (1996) 517 U.S. 690, 695 ["not a finely-tuned standard"].
[3] *Hanson v. Dane County* (7th Cir. 2010) 608 F.3d 335. 338.
[4] *U.S. v. Jones* (1st Cir. 2012) 700 F.3d 615, 621. Note: Most of the principles we discuss apply to both probable cause and reasonable suspicion. See *Green v. Reeves* (6th Cir. 1996) 80 F.3d 1101, 1106.
[5] See *United States v. Sokolow* (1989) 490 U.S. 1, 7; *United States v. Arvizu* (2002) 534 U.S. 266, 274.
[6] *Illinois v. Gates* (1983) 462 U.S. 213, 231.
[7] See *Texas v. Brown* (1983) 460 U.S. 730, 742; *Illinois v. Gates* (1983) 462 U.S. 213, 232.
[8] See *Maryland v. Pringle* (2003) 540 U.S. 366, 371; *U.S. v. Howard* (7th Cir. 2018) 883 F.3d 703, 707.
[9] *U.S. v. Ludwig* (10th Cir. 2011) 641 F.3d 1243, 1251.
[10] See *Heien v. North Carolina* (2014) 574 U.S. 54.

or more likely true than false,"[11] and that it requires only a "fair" probability, not a statistical probability.[12] It is therefore apparent that probable cause requires something less than a 50% chance.[13] How much less? Although the courts have not tried to figure it out (because the Supreme Court told them not to), it is certainly not much lower than 50%.

Reasonable suspicion

As noted, the required probability percentage for reasonable suspicion is a mystery. For example, the Supreme Court has said that, while probable cause requires a "fair probability," reasonable suspicion requires only a "moderate" probability.[14] What is the difference between a "moderate" and "fair" probability? Who knows? But because the Court has said that reasonable suspicion requires "considerably less [proof] than a preponderance of the evidence,"[15] it necessarily requires "considerably less" than probable cause.[16] Thus, the Tenth Circuit observed that "reasonable suspicion may exist even if it is more likely than not that the individual is not involved in any illegality. This is because reasonable suspicion requires considerably less proof of wrongdoing by a preponderance of the evidence."[17]

Facts: The Lifeblood of Probable Cause

The first thing—and sometimes the only thing—that the courts look for in determining whether officers had probable cause is the factual basis for their belief that it exists. Indeed, the Supreme Court has called this the "central teaching of this Court's Fourth Amendment jurisprudence," explaining that officers "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion."[18] Thus, in *People v. Maltz* the court observed, "Over and over again the cases instruct that the question of reasonable cause is to be determined by reference to the particular facts and circumstances in the case at hand."[19] We will now discuss how the courts determine whether information was sufficiently factual.

Reliability

Information can help establish probable cause or reasonable suspicion only if there was reason to believe it was reliable, or at least "reasonably trustworthy."[20] In other words, "Information is only as good as its source."[21] Thus, information from untested informants will have little, if any, weight unless there was some circumstantial evidence of its reliability. As the Supreme Court explained, probable cause and reasonable suspicion "are dependent upon both the content of the information possessed by police and its degree of reliability. Both factors are considered in the totality of circumstances."[22]

PRESUMPTIVELY RELIABLE SOURCES: Some sources of information are presumptively reliable, most notably law enforcement officers, "citizen informants," and official government records such as rap sheets. But the most common reliable source is the "tested police informant," also known as a "confidential reliable informant" or CRI. To prove that an informant qualifies as "tested," officers will ordinarily explain that he previously furnished information that led to arrests, holding orders, indictments, or convictions. An informant who provided information that led to the issuance of a search warrant may also be deemed

[11] *Texas v. Brown* (1983) 460 U.S. 730, 742. Also see *People v. Carrington* (2009) 47 Cal.4th 145, 163.
[12] See *Illinois v. Gates* (1983) 462 U.S. 213, 238; *Safford Unified School District v. Redding* (2009) 557 U.S. 364, 371.
[13] See *U.S. v. Melvin* (1st Cir. 1979) 596 F.2d 492, 495.
[14] *Safford Unified School District v. Redding* (2009) 557 U.S. 364, 371.
[15] *Illinois v. Wardlow* (2000) 528 U.S. 119, 123. Also see *United States v. Arvizu* (2002) 534 U.S. 266, 274.
[16] *United States v. Sokolow* (1989) 490 U.S. 1, 7. Also see *Kansas v. Glover* (2020) __ U.S. __ [140 S.Ct. 1183].
[17] *U.S. v. Latorre* (10th Cir. 2018) 893 F.3d 744, 751.
[18] *Terry v. Ohio* (1968) 392 U.S. 1, 21.
[19] (1971) 14 Cal.App.3d 381, 390-391. Also see *U.S. v. Cervantes* (9th Cir. 2012) 678 F.3d 798, 803 ["But in the absence of any underlying facts, this [information] is entitled to little, if any, weight"].
[20] *Beck v. Ohio* (1964) 379 U.S. 89, 91. Also see *United States v. Harris* (1971) 403 U.S. 573, 582.
[21] *U.S. v. Hauk* (10th Cir. 2005) 412 F.3d 1179, 1188.
[22] *Alabama v. White* (1990) 496 U.S. 325, 330.

"tested" if the search resulted in the discovery of evidence that the informant said would be there. In contrast, an informant's reliability will not be established by an officer's assertion that his tips led to "many ongoing investigations" or resulted in some other ambiguous achievement.[23]

PRESUMPTIVELY UNRELIABLE SOURCES: The least reliable of all sources are untested police informants who, by definition, have no track record in providing accurate information. As the California Supreme Court observed, "All familiar with law enforcement know that the tips they provide may reflect their vulnerability to police pressure or may involve revenge, braggadocio, self-exculpation, or the hope of compensation."[24]

For this reason, information from untested informants is virtually useless unless officers were able to corroborate some or all of it. In discussing this requirement, the Court of Appeal observed, "Corroboration is not limited to a given form but includes within its ambit any facts, sources, and circumstances which reasonably tend to offer independent support for information claimed to be true."[25]

Information from "official channels"

Facts are ordinarily irrelevant in determining the existence of probable cause or reasonable suspicion unless they had been communicated to the officer who acted on it; i.e., the officer who made the detention, arrest, or search; or the officer who applied for the search or arrest warrant.[26] As the California Supreme Court explained, "The question of the reasonableness of the officers' conduct is determined on the basis of the information possessed by the officer at the time a decision to act is made."[27] Thus, a search or seizure made without sufficient justification cannot be rehabilitated in court by showing that it would have been justified if the officer had been aware of information possessed by a colleague.

Officers may, however, consider information they received through "official channels," even if they knew nothing else about it. This is because "effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information."[28] Or, as the Ninth Circuit put it:

> The accepted practice of modern law enforcement is that an officer often makes arrests at the direction of another law enforcement officer even though the arresting officer himself lacks actual, personal knowledge of the facts supporting probable cause.[29]

For example, in *U.S. v. Lyons*[30] state troopers in Michigan stopped and searched the defendant's car based on a tip from DEA agents that the driver might be transporting drugs. On appeal to the Sixth Circuit, Lyons argued that the search was unlawful because the troopers had no information as to why she was a suspected of carrying drugs. But, as the court pointed out, "it is immaterial that the troopers were unaware of all the specific facts that supported the DEA's reasonable suspicion analysis. The troopers possessed all the information they needed to act—a request by the DEA (subsequently found to be well-supported)."

What's an "official" channel? It is any conduit through which information pertaining to the existence of probable cause or reasonable suspicion is transmitted from one officer to another, or from one governmental agency or database to officers. Such transmissions may be formal or informal. A formal official channel is a dedicated conduit through which information pertaining to probable cause is routinely transmitted to officers. These include NCIC, CLETS, AWS, "be on the lookout" notices, wanted flyers, and roll call notifications.

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[23] See *People v. McFadin* (1982) 127 Cal.App.3d 751, 764.
[24] *People v. Kurland* (1980) 28 Cal.3d 376, 393. Also see *Higgason v. Superior Court* (1985) 170 Cal.App.3d 929, 952.
[25] *People v. Levine* (1984) 152 Cal.App.3d 1058, 1065. Also see *People v. Spencer* (2018) 5 Cal.5th 642, 664, 667.
[26] See *Ker v. California* (1963) 374 U.S. 23, 40, fn.12; *Maryland v. Garrison* (1987) 480 U.S. 79, 85.
[27] *People v. Gale* (1973) 9 Cal.3d 788, 795.
[28] *United States v. Hensley* (1985) 469 U.S. 221, 231.
[29] *U.S. v. Jensen* (9th Cir. 2005) 425 F.3d 698, 704.
[30] (6th Cir. 2012) 687 F.3d 754, 768.

An informal official channel is simply a conduit by which information is spontanenously transmitted between officers and law enforcement agencies about criminal activity, a particular crime, or about a particular suspect. These communications are usually transmitted via police radios, cell phones, text messages, and face-to-face conversations.

This does not mean, however, that information transmitted through formal or informal official channels is somehow sacrosanct and cannot be tested or questioned by defendants in court when they seek to suppress evidence obtained as the result of an arrest or detention. Although officers "are entitled to presume the accuracy of information furnished to them by other law enforcement personnel,"[31] prosecutors may be required to prove in court that the information was factual, and that it had been disseminated to the officer who acted upon it.[32]

Totality of circumstances

Probable cause and reasonable suspicion are based on an assessment of the overall force of the facts at hand; i.e., the "totality of circumstances." This is significant because some courts in the past would utilize a "divide-and-conquer"[33] approach whereby they would subject each fact to meticulous appraisal, then rule probable cause did not exist because none of the individual facts were compelling.

This practice officially ended when, in the landmark decision in *Illinois v. Gates*,[34] the Supreme Court announced that probable cause and reasonable suspicion must be based on the convincing force of the officers' information as a whole. As the Fifth Circuit pointed out, "We must be mindful that probable cause is the sum total of layers of information and the synthesis of what the police have heard, what they know, and what they observed as trained officers. We weigh not individual layers but the laminated total.[35] Thus, in *People v. McFadin* the court responded to the defendant's "divide-and-conquer" strategy by utilizing the following analogy:

> Defendant would apply the axiom that a chain is no stronger than its weakest link. Here, however, there are strands which have been spun into a rope. Although each alone may have insufficient strength, and some strands may be slightly frayed, the test is whether when spun together they will serve to carry the load of upholding [the probable cause determination].[36]

For example, in *Maryland v. Pringle*[37] an officer made a traffic stop on a car occupied by three men and, in the course of the stop, he saw some things that reasonably caused him to suspect that the men were drug traffickers. One of those things was a wad of cash ($763). Consequently, he searched the car and found cocaine. At a hearing on a motion to suppress, Pringle argued that the officers lacked probable cause. The state court agreed, saying the officer should have ignored the money because possession of money is not illegal. Prosecutors appealed the ruling to the Supreme Court which ruled that the Maryland court had focused erroneously on the money when it should have considered all of the relevant circumstances. Said the Court, "[C]onsideration of the money in isolation, rather than as a factor in the totality of the circumstances, is mistaken."

Considering exculpatory facts

If probable cause exists, officers are not required to conduct an additional investigation to determine if there were other facts that might undermine probable cause.[38] Still, officers are "not free to disregard plainly exculpatory evidence, even if substantial inculpatory evidence (standing by itself) suggests that probable cause exists."[39]

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[31] *U.S. v. Lyons* (6th Cir. 2012) 687 F.3d 754, 768.
[32] See *United States v. Hensley* (1985) 469 U.S. 221, 232. Also see *People v. Madden* (1970) 2 Cal.3d 1017.
[33] *United States v. Arvizu* (2002) 534 U.S. 266, 274.
[34] (1983) 462 U.S. 213. Also see *Massachusetts v. Upton* (1984) 466 U.S. 727, 734 ["internal coherence"].
[35] *U.S. v. Edwards* (5th Cir. 1978) 577 F.2d 883, 895. Also see *U.S. v. Valdes-Vega* (9th Cir. 2013) 739 F.3d 1074.
[36] (1982) 127 Cal.App.3d 751, 767.
[37] (2003) 540 U.S. 366.
[38] See *Hamilton v. City of San Diego* (1990) 217 Cal.App.3d 838, 845; *U.S. v. Pabon* (2nd Cir. 2017) 871 F.3d 164, 176.
[39] *Goodwin v. Conway* (3rd Cir. 2016) 836 F.3d 321, 328.

Evaluating the Facts

After all of the relevant facts have been isolated, the courts must determine whether they added up to probable cause. Although this process is highly subjective, there are certain rules that apply, as follows.

Common sense

The significance of the facts is judged by applying common sense, not hypertechnical analysis. Thus, the circumstances must be "viewed from the standpoint of an objectively reasonable police officer."[40] As the Supreme Court explained, "Perhaps the central teaching of our decisions bearing on the probable cause standard is that it is a practical, nontechnical conception. In dealing with probable cause, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."[41]

Legal, but suspicious, activities

Activities and circumstances that are not illegal per se may contribute to or even establish probable cause if they become suspicious when considered in light of the other circumstances. To put it another way, the distinction between criminal and non-criminal conduct "cannot rigidly control" because probable cause and reasonable suspicion "are fluid concepts that take their substantive content from the particular contexts in which they are being assessed."[42]

For example, in *People v. Juarez*[43] the defendant argued that officers lacked grounds to detain him because the only "suspicious" thing he did was run when he saw them. The court acknowledged that "running down a street is indistinguishable from the action of a citizen engaged in a program of physical fitness," but it can become "highly suspicious" when it is "viewed in context of immediately preceding gunshots." Similarly, in *Massachusetts v. Upton*[44] a lower court ruled that probable cause to arrest the defendant could not have existed because is was based on evidence that was "related to innocent, nonsuspicious conduct." That does not matter, said the Supreme Court, because the test is whether the various pieces "fit neatly together" as demonstrating of criminal conduct.

For example, in *United States v Sokolow*,[45] DEA agents detained Andrew Sokolow after he landed at Honolulu International Airport from Miami. The reasons for the detention were: (1) he had paid $2,100 for two airplane tickets from a roll of $20 bills; (2) he was traveling under a name that did not match the name under which his telephone number was listed; (3) he had stayed in Miami for only 48 hours, even though a round-trip flight from Honolulu to Miami takes 20 hours; (4) he appeared nervous during his trip; and (5) he checked none of his luggage.

The Ninth Circuit ruled these circumstance were irrelevant in establishing reasonable suspicion because they were all "legal." The Supreme Court reversed, saying, "Any one of these factors is not by itself proof of any illegal conduct and is quite consistent with innocent travel. But we think taken together they amount to reasonable suspicion."

Possibility of innocent explanation

If the facts support an officer's conclusion that there is probable cause, it does not matter that the officer could not "rule out the possibility of innocent conduct."[46] As the California Supreme Court explained, "The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of his investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal to enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges."[47]

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[40] *Ornelas v. United States* (1996) 517 U.S. 690, 696.
[41] *Illinois v. Gates* (1983) 462 U.S. 213, 231. Also see *Illinois v. Wardlow* (2000) 528 U.S. 119, 125.
[42] *Safford Unified School District v. Redding* (2009) 557 U.S. 364, 371. Also see *Maryland v. Pringle* (2003) 540 U.S. 366, 372, fn.2.
[43] (1973) 35 Cal.App.3d 631, 636.
[44] (1984) 466 U.S. 727, 731-32.
[45] (1989) 490 U.S. 1. Also see *People v. Glenos* (1992) 7 Cal.App.4th 1201, 1207; *U.S. v. Ruidiaz* (1st Cir. 2008) 529 F.3d 25, 30
[46] *United States v. Arvizu* (2002) 534 U.S. 266, 277. Also see *District of Columbia v. Wesby* (2018) __ U.S. __ [138 S.Ct. 577, 588].
[47] *In re v. Tony C.* (1978) 21 Cal.3d 888, 894. Also see *People v. Brown* (2015) 61 Cal.4th 968, 985.

Multiple incriminating circumstances

Here is a principle of probable cause that is often overlooked or underappreciated: The chances of having it increase *exponentially* with each additional piece of independent incriminating evidence that comes to light. In other words, when there are two pieces of evidence that exist independently of each other, the combination of the two generates somewhat more suspicion than would have resulted if the two pieces were interrelated.

To illustrate, if probable cause and reasonable suspicion could be tallied on a scorecard, and a suspect on the street matched a general description of the perpetrator of a robbery that had just occurred nearby, we would give him a PC score of, say, two: one point because he resembled the robber and a second point for being near the crime scene shortly after the robbery occurred. But he would also be entitled to a bonus of, say, one tenth of a point because the combination of two independent circumstances (physical description plus location) is, in effect, an additional incriminating circumstance in that it constitutes a noteworthy "coincidence of information."[48] Thus, when it comes to probable cause, "the whole is greater than the sum of its parts."[49]

For example, in *People v. Hillery*,[50] officers in Kings County arrested Booker Hillery who had been walking in a rural area near where a 15-year old girl had been raped and murdered. In addition to the time and distance evidence, officers knew that a car "similar to defendant's uniquely painted black and turquoise 1952 Plymouth" had been seen about two-tenths of a mile from the scene of the crime. They were also aware that Hillery had a prior record of conviction for forcible rape, and he knew that the victim occasionally baby sat at the farm where defendant worked." In ruling that these pieces of independent incriminating evidence constituted probable cause, the California Supreme Court said, "The probability of the independent concurrence of these factors in the absence of the guilt of defendant was slim enough to render suspicion of defendant reasonable and probable.

Similarly, in a case from Santa Clara County,[51] a man named Anthony Spears, who worked at a Chili's in Cupertino, arrived at the restaurant one morning and "discovered" that the manager had been shot and killed before the restaurant had opened for the day. In the course of their investigation, sheriff's deputies learned that Spears had left home shortly before the murder even though it was his day off, there were no signs of forced entry, and that Marlboro cigarette butts (the same brand that Spears smoked) had been found in an alcove near the manager's office. Moreover, Spears had given conflicting statements about his whereabouts when the murder occurred; and, after "discovering" the manager's body, he told other employees that the manager had been "shot" but the cause of death was not apparent from the condition of the body.

Based on this evidence, detectives obtained a war-rant to search Spears' apartment and the search netted, among other things, "large amounts of blood-stained cash." On appeal, Spears argued that the detectives lacked probable cause for the warrant but the court disagreed, saying, "[W]e believe that all of the factors, considered in their totality, supplied a degree of suspicion sufficient to support the magistrate's finding of probable cause."

While this principle also applies to reasonable suspicion to detain, a lesser amount of independent incriminating evidence will be required. Examples:

- The suspect's physical description and his clothing were similar to that of the perpetrator.[52]

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[48] *Illinois v. Gates* (1983) 462 U.S. 213, 222, fn.7; *Ker v. California* (1963) 374 U.S. 23, 36 ["To say that this coincidence of information was sufficient to support a reasonable belief of the officers that Ker was illegally in possession of marijuana is to indulge in understatement."]; *U.S. v. Arthur* (1C 2014) 764 F.3d 92, 97-98.

[49] *District of Columbia v. Wesby* (2018) __ U.S. __ [138 S.Ct. 577, 588].

[50] (1967) 65 Cal.2d 795.

[51] *People v. Spears* (1991) 228 Cal.App.3d 1.

[52] See *Chambers v. Maroney* (1970) 399 U.S. 42, 46-47; *People v. Adams* (1985) 175 Cal.App.3d 855, 861.

- In addition to a description similarity, the suspect was in a car similar in appearance to that of the perpetrator.[53]
- The suspect resembled the perpetrator and he was in the company of a person who was positively identified as one of two men who had just committed the crime.[54]
- The suspect resembled the perpetrator plus he was detained shortly after the crime occurred at the location where the perpetrator was last seen or on a logical escape route.[55]

Unique circumstances

The odds of having reasonable suspicion or probable cause also increase dramatically if the matching or similar characteristics were unusual or distinctive. As the Court of Appeal observed, "Uniqueness of the points of comparison must also be considered in testing whether the description would be inapplicable to a great many others."[56] Conversely, the Second Circuit noted that "when the points of similarity are less unique or distinctive, more similarities are required before the probability of identity between the two becomes convincing."

Training and experience: Making inferences

As noted earlier, probable cause and reasonable suspicion must be based on "specific and articulable facts." Nevertheless, the courts will also consider an officer's inferences as to the meaning or significance of the facts so long as the inference appeared to be reasonable; e.g., inferences based on training and experience.[57] In the words of the Supreme Court, "The evidence must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement."[58] Or, as the Supreme Court explained in *United States v. Arvizu*:

> The process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.[59]

For example, in *People v. Soun*[60] the defendant and three other men killed the owner of a video store in San Jose during a botched robbery. The men were all described as Asian, but witnesses provided conflicting descriptions of their getaway car. Some reported that it was a two-door Japanese car, but one said it was a Volvo "or that type of car." Two of the witnesses provided a partial license plate number. One said he thought it began with "1RCS," possibly "1RCS525" or "1RCS583." The other said he thought it was 1RC(?)538.

A San Jose officer at the station was monitoring these developments on a radio and he made two inferences: (1) the actual license plate probably began with "1RCS ___," and (2) the last three numbers included a 5 and an 8. So he started running these combinations through the DMV computer until he got a hit on 1RCS558, a 1981Toyota registered in Oakland.

Because the car was last seen heading in the direction of Oakland, officers notified OPD and, the next day, OPD officers stopped the car and, after consulting with SJPD investigtors, arrested the occupants for the murder. This, in turn, resulted in the seizure of the murder weapon. On appeal, one of the occupants, Soun, argued that the weapon should have been suppressed because the detention was based on nothing more than "hunch and supposition." On the contrary, said the court, what Soun labeled "hunch and supposition" was actually "intelligent and resourceful police work."

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[53] See *People v. Hill* (2001) 89 Cal.App.4th 48, 55; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1524-25.
[54] *People v. Bowen* (1987) 195 Cal.App.3d 269, 274. Also see *In re Carlos M.* (1990) 220 Cal.App.3d 372, 382; *In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1092.
[55] *People v. Atmore* (1970) 13 Cal.App.3d 244, 246.
[56] *In re Brian A.* (1985) 173 Cal.App.3d 1168, 1174.
[57] See *United States v. Cortez* (1981) 449 U.S. 411, 418; *People v. Ledesma* (2003) 106 Cal.App.4th 857, 866; *U.S. v. Lopez-Soto* (9th Cir. 2000) 205 F.3d 1101, 1105 ["An officer is entitled to rely on his training and experience in drawing inferences from the facts he observes, but those inferences must also be grounded in objective facts and be capable of rational explanation."]
[58] *Illinois v. Gates* (1983) 462 U.S. 213, 232.
[59] (2002) 534 U.S. 266, 273.
[60] (1995) 34 Cal.App.4th 1499. Also see *Maryland v. Pringle* (2003) 540 U.S. 366, 371-72.

Hunches and unsupported conclusions

In contrast to reasonable inferences, are hunches. It might be surprising that the courts are aware that hunches play an important role in solving crimes. Said the Ninth Circuit, "A hunch may provide the basis for solid police work; it may trigger an investigation that uncovers facts that establish reasonable suspicion, probable cause, or even grounds for a conviction."[61] Still, hunches are irrelevant in determining the existence of probable cause or reasonable suspicion.

The same is true of unsupported conclusions.[62] For example, in ruling that a search warrant affidavit failed to establish probable cause, the court in *U.S. v. Underwood*[63] noted that much of the affidavit was "made up of conclusory allegations" that were "entirely unsupported by facts." Two of these allegations were that officers had made "other seizures" and had "intercepted conversations" that tended to prove the defendant was a drug trafficker. "[T]hese vague explanations," said the court, "add little if any support because they do not include underlying facts."

Information inadmissible in court

In determining whether probable cause or reasonable suspicion exist, officers may consider both hearsay and privileged communications.[64] For example, although a victim's identification of the perpetrator might constitute inadmissible hearsay or fall within the marital privilege, officers may rely on it unless they had reason to believe it was false. As the Court of Appeal observed, "The United States Supreme Court has consistently held that hearsay information will support issuance of a search warrant. Indeed, the usual search warrant, based on a reliable police informer's or citizen-informant's information, is necessarily founded upon hearsay."[65] On the other hand, information will not be considered if it was later determined that it was obtained in violation of the suspect's constitutional rights; e.g., an illegal search or seizure.[66]

Mistakes of fact and law

If probable cause was based on information that was subsequently determined to be inaccurate or false, the information may nevertheless be considered if the officers reasonably believed it was true. As the Court of Appeal put it, "If the officer's belief is reasonable, it matters not that it turns out to be mistaken."[67] Or, in the words of the Supreme Court, "[W]hat is generally demanded of the many factual determinations that must regularly be made by agents of the government is not that they always be correct, but that they always be reasonable."[68]

What about mistakes as the law? In the past, searches and seizures were routinely invalidated if probable cause was based on an officer's mistake pertaining to the applicable law; e.g., that officer arrested the suspect for the "wrong" crime. In 2014, however, the Supreme Court ruled that suppression may not be appropriate if the mistake of law was reasonable. For example, an officer's mistake as to the existence or meaning of a statute will not invalidate a search or seizure if the mistake was objectively reasonable.[69] It appears, however, that this ruling may not apply to mistakes of law pertaining to the constitutional requirements for conducting searches and seizures. As the Ninth Circuit observed, "If an officer simply does not know the law, and makes a stop based upon objective facts that cannot constitute a violation, his suspicions cannot be reasonable."[70] POV

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[61] *U.S. v. Thomas* (9th Cir. 2000) 211 F.3d 1186, 1192.
[62] See *Illinois v. Gates* (1983) 462 U.S. 213, 239 [a "wholly conclusory statement" is irrelevant]; *People v. Leonard* (1996) 50 Cal. App.4th 878, 883 ["Warrants must be issued on the basis of facts, not beliefs or legal conclusions."]; *U.S. v. Garcia-Villalba* (9th Cir. 2009) 585 F.3d 1223, 1234.
[63] (9th Cir. 2013) 725 F.3d 1076.
[64] See *United States v. Ventresca* (1965) 380 U.S. 102, 108; *People v. Navarro* (2006) 138 Cal.App.4th 146, 147.
[65] *People v. Superior Court (Bingham)* (1979) 91 Cal.App.3d 463, 472.
[66] See *Lozoya v .Superior Court* (1987) 189 Cal.App.3d 1332, 1340; *U.S. v. Barajas-Avalos* (9th Cir. 2004) 377 F.3d 1040, 1054.
[67] *Cantrell v. Zolin* (1994) 23 Cal.App.4th 128, 134. Also see *Hill v. California* (1971) 401 U.S. 797, 802.
[68] *Illinois v. Rodriguez* (1990) 497 U.S. 177, 185. Edited.
[69] *Heien v. North Carolina* (2014) 574 U.S. 54, 66.
[70] *U.S. v. Mariscal* (9th Cir. 2002) 285 F.3d 1127, 1130.