Sheridan Police Department
Policies and Procedures
10.5
Chapter 10 – Search & Seizure
Section 5 – Probably Cause & Reasonable Suspicion

Date: January 1, 2013
Reviewed: 11/09/2021

Signature:

The ability to identify probable cause and reasonable suspicion is vital in determining the scope of actions officers may take in regard to search and seizure.

10.5.1 Probable Cause

A. Probable cause refers to the standard by which police officers have the right to make arrests, conduct personal or property searches, and obtain warrants. The term comes from the Fourth Amendment of the United States Constitution. The constitution does not furnish a definition of "probable cause" leaving that task to the courts.

B. Over the years, several definitions of probable cause have emerged from the supreme court including:
    1. "Probable cause is where known facts and circumstances, of a reasonably trustworthy nature, are sufficient to justify a man of reasonable caution or prudence in the belief that a crime has been or is being committed." (Draper v U.S.)
    2. "Probable cause is the sum total of layers of information and synthesis of what police have heard, know, or observe as trained officers." (Smith v U.S.)
    3. Probable cause exists when "the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a prudent person to believe that a suspect has committed, is committing, or is about to commit a crime." (United States v Hoyos)
    4. "Whether an arrest is valid depends upon whether, at the moment the arrest was made, the officers had probable cause to make it - whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the person to be arrested had committed or was committing an offense." (Beck v Ohio)

C. The court has also offered the following guidance:
    1. "Probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction." (Adams v Williams)
    2. "Finely-tuned standards, such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the probable cause decision." (Maryland v Pringle)
    3. "We have held that probable cause means a 'fair probability'." (U.S. v Sokolow)

D. Supreme court case law has indicated that rumor, mere suspicion, and even "strong reason to suspect" are not equivalent to probable cause.

E. Elements of probable cause
    1. Probable cause may be established through investigation, observation, witnesses, confidential informants, or through anonymous sources provided that the information is corroborated by investigation.

2. Unnamed informants may be used in an affidavit for a search warrant if the informant has first-hand knowledge of the investigation and information is included about why the informant is credible and reliable.
3. Most sources of probable cause can be categorized into four groups:
    a. Observation -- These are things that the police officer obtains knowledge of via the senses: sight, smell, and hearing. This category also includes the kinds of inferences to be made when the experienced police officer is able to detect a familiar pattern of criminal activity that contains a series of suspicious behaviors (i.e. - circling the block twice around an armored car unloading at a bank).
    b. Expertise -- These are the kinds of things that a police officer is specially trained at; such as gang awareness and identification, recognition of burglar tools, the ability to read graffiti and tattoos, and various other techniques in the general direction of knowing when certain gestures, movements, or preparations tend to indicate impending criminal activity.
    c. Circumstantial Evidence -- This is evidence that points the finger away from other suspects, and by a process of elimination, the only probable conclusion to be drawn is that the persons or things left behind are involved in crime.
    d. Information -- This is a broad category which includes informants, statements by witnesses and victims, and announcements via police bulletins, broadcasts, and shift briefings.

10.5.2 Reasonable Suspicion

A. The term "reasonable suspicion" is not of constitutional derivation but was fashioned by the court to describe a level of suspicion lower than probable cause.
B. In Terry v Ohio, the court noted that a temporary investigative detention is less of an infringement of a person's liberty than an arrest. Therefore, the court ruled, police need not have as much justification for this lower level of restraint as the probable cause required to make an arrest.
C. The court, (in Alabama v White) said that both the quantity and the quality of information constituting reasonable suspicion may be below the level needed for probable cause: "Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause."

10.5.3 Investigative Detention

A. Under the Fourth Amendment to the United States Constitution and Article I, § 7 of the Connecticut Constitution, a police officer is permitted to detain an individual for investigative purposes if the officer believes, based on a reasonable and articulable suspicion, that the individual is engaged in criminal activity, even if there is no probable cause to make an arrest. The ability to detain an individual under these circumstances is typically referred to as investigative detention.

1. Under the United States Constitution and Article First, §§ 7 and 9 of the Connecticut Constitution, a police officer may in appropriate circumstances and in an appropriate manner detain an individual for investigative purposes if the officer believes, based on a reasonable and articulable suspicion that the individual is engaged in criminal activity, even if there is no probable cause to make an arrest (*State v. Lipscomb,* 258 Conn. 68, 75, (2001); *Terry v. Ohio,* 88 S.Ct. 1868 (1968)).
2. The police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. A court reviewing the legality of such a detention must look to the whole situation when determining whether detention is justified and consider if the detaining officers had a particularized and objective basis for suspecting the particular person stopped of criminal activity (*State v. Nash,* 278 Conn. 620 (2006)).
3. Where an officer has a reasonable basis to think that the person stopped poses a present physical threat to the officer or others, the Fourth Amendment permits the officer to take necessary measures to neutralize the threat without converting a reasonable stop into a de facto arrest. This doctrine has supported a range of restraints incident to a stop, from the pat-down at issue in *Terry,* to the drawing of firearms, to the use of handcuffs (*State v. Nash).*
4. Similarly, requiring a suspect to accompany a police officer to another place does not necessarily transform what would otherwise be a permissible investigatory detention into an arrest (*State v. Nash*). In *State v. Mitchell* (204 Conn. 187, 199, cert denied 484 U.S. 927 (1987)), the court held that transporting the defendants to the hospital for viewing by the victim did not exceed the permissible scope of an investigative detention (204 Conn. 187, 199, cert denied 484 U.S. 927 (1987)). (Also see *Florida v. Royer*, 460 U.S. 491, (1983) in which the Court stated that there are undoubtedly reasons of safety and security that would justify moving a suspect from one location to another during an investigatory detention.