

Chapter Two

What Constitutes Probable Cause?

Beck v. Ohio, 379 U.S. 89 (1964)

Draper v. United States, 358 U.S. 307 (1959)

Aguilar v. Texas, 378 U.S. 108 (1964)

Spinelli v. United States, 393 U.S. 410 (1969)

Illinois v. Gates, 462 U.S. 213 (1983)

INTRODUCTION

In principle, probable cause means the same thing regardless of the conduct in which the police engage. It has been defined by the Supreme Court as more than bare suspicion; it exists when "the facts and circumstances within [the officers'] knowledge and of which they [have] reasonably trustworthy information [are] sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense" (*Beck v. Ohio*).

These are legal definitions of little use to those on the front lines. A more practical definition of probable cause is more than 50 percent certainty. It lies somewhere below absolute certainty and proof beyond a reasonable doubt (the latter of which is necessary to obtain a criminal conviction), and somewhere above a hunch or reasonable suspicion (the latter of which is required to conduct a stop and frisk).

The notion of a "prudent man" means that courts consider what the average "person on the street" would believe, not what a person who has received special training in the identification and apprehension of law breakers (police officer, judge, etc.) would believe. This is not to say, however, that the experience of a police officer must take a back seat to the probable cause determination.

Probable cause is always required in the following scenarios: (1) arrests with warrants; (2) arrests without warrants; (3) searches and seizures of property with warrants; and (4) searches and seizures of property without warrants. When warrants are required, the probable cause determination is made by the magistrate charged with issuing the warrant; when warrants are not used, the police officer makes the probable

cause determination. Generally "probable cause can be obtained from police radio bulletins, tips from 'good citizen' informers who have happened by chance to see criminal activity, reports from victims, anonymous tips, and tips from 'habitual' informers who mingle with people in the underworld and who themselves may [even] be criminals. Probable cause can be based on various combinations of these sources" (Miles et al. 1988-89, 6:4).

When the police make arrests, the probable cause determination concerns whether an offense has been committed and whether the suspect did, in fact, commit the offense. In the case of a search, however, the probable cause issue concerns whether the items to be seized are connected with criminal activity and whether they can be found in the place to be searched. This means, then, that the courts sometimes treat the probable cause requirement different depending on the conduct the police engage in.

One point needs to be underscored: Probable cause to search does not necessarily create probable cause to arrest, and, alternatively, probable cause to arrest does not necessarily create probable cause to search. With regard to the latter point, consider this hypothetical: Police officers pursue a drug suspect into her residence and, based on a hot pursuit exigency, arrest her in her living room. Assuming probable cause was in place to pursue the suspect, the police do not possess unfettered latitude once in the house to search the place top to bottom. The courts have placed restrictions on what can be done in a situation such as this, that is, on how far the police can go with a search following (incident) to arrest. We will cover searches incident to arrest in a later chapter, but this example illustrates that the ingredients in the probable cause recipe are not always the same for arrests as they are for searches.

REFERENCE

Miles, J.G., Jr., D.B. Richardson, and A.E. Scudellari. (1988-1989). *The Law Officer's Pocket Manual*. Washington, D.C.: Bureau of National Affairs. ♦

BECK V. OHIO 379 U.S. 89 (1964)

FACTS

On the afternoon of November 10, 1961, William Beck was driving his car near East 115th Street and Beulah Avenue in Cleveland, Ohio. City police officers confronted him, identified themselves, and ordered him to pull over to the curb. The officers possessed neither

an arrest warrant nor a search warrant. Placing him under arrest, they searched his car but found nothing of interest. They then took him to a nearby police station where they searched his person and found an envelope containing a number of clearing house slips. Beck was charged in the Cleveland Municipal Court with possession of clearing house slips in violation of a state criminal statute. He filed a motion to suppress the clearing house slips in question, arguing that the police had obtained them by means of an unreasonable search and seizure in violation of the Fourth and Fourteenth Amendments.

ISSUE

Were the arrest and subsequent search in violation of the Fourth Amendment?

HOLDING

Yes. Police have probable cause to arrest when they have reasonably trustworthy information that would warrant a person of "reasonable caution" to believe a crime is taking place or has taken place.

RATIONALE

"Whether an arrest without warrant is constitutionally valid depends upon whether, at the moment the arrest was made, the officer had probable cause to make it, that is, whether at that moment the facts and circumstances within his knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense."

CASE SIGNIFICANCE

This case is significant because the Court announced one of its most often cited definitions of probable cause, based on the "prudent man." *Beck* can be understood as requiring police officers to show probable cause based on what a reasonable person, not a single individual, would believe. While the officers in *Beck* may have thought, individually, that they had probable cause to stop the vehicle, the Court noted that a "prudent man," or reasonable person, would not have.

DRAPER V. UNITED STATES 358 U.S. 307 (1959)

FACTS

A federal narcotics agent was notified by a paid informer who had supplied reliable information in the past that Draper was selling drugs. The informant also notified the agent that Draper had gone to Chicago to obtain more drugs and that he would be returning on a

train carrying a tan bag that would contain the narcotics. Finally, the informant described what clothes Draper would be wearing and mentioned that he would be walking quickly after exiting the train. The agent observed a man fitting the description given by the informant. Without a warrant, Draper was arrested. He was searched and drugs were found. Draper was convicted at trial despite his motion to suppress the evidence.

ISSUE

Can information provided by an informant that is later corroborated by a law enforcement officer establish probable cause to arrest?

HOLDING

Yes. So long as an informant's tip "is reasonably corroborated by other matters within the officer's knowledge," the tip can be considered credible for purposes of establishing probable cause to arrest.

RATIONALE

The informant had supplied reliable information in the past. Also, the agent took steps to verify the information supplied by the informant. When the information provided by the informant was found to be accurate, the officer had probable cause to arrest Draper.

CASE SIGNIFICANCE

Draper essentially permitted reliance on hearsay for purposes of establishing probable cause to arrest. Ordinarily hearsay is not admissible in a criminal trial. However, the Supreme Court appears not to have a problem with hearsay in the probable cause context, as long as law enforcement officers corroborate what was said. This case was also controversial because even though the informant supplied information that proved to be accurate, nothing the agent observed prior to Draper's arrest was itself incriminating. It is important to realize that *Draper* dealt with arrests, not searches, so it basically stands alone.

AGUILAR V. TEXAS 378 U.S. 108 (1964)

FACTS

A search warrant was issued on an affidavit from two police officers who swore that they had "received reliable information from a credible person and [did] believe" that illegal drugs were being stored in the place to be searched. *Aguilar* was convicted and appealed; the state supreme court denied his appeal, and the U.S. Supreme Court granted certiorari.

ISSUE

Must an affidavit for a search warrant based on a tip from an informant contain sufficient details about how the informant reached his or her conclusions and how he or she came by that knowledge?

HOLDING

Yes. An affidavit based on tips from an informant must clearly state (1) how the informant knows what he or she knows and (2) why the informant should be believed.

RATIONALE

A detailed statement about how the informant came to know of the criminal activity in question is important in assessing the informant's credibility, but it is not enough; the informant must prove to be reliable. Alternatively, an informant who has supplied reliable information in the past is more likely to be trusted than one who has not, but if the informant does not describe how he or she came to learn of the criminal activity in question, police may ultimately make an arrest based on less than probable cause. A detailed showing in both areas is necessary.

CASE SIGNIFICANCE

Aguilar is an important case because, unlike *Draper*, it dealt with a search. Also, it was more restrictive than *Draper*; that is, it required that police show how an informant knows what he or she knows and why he or she should be believed. These two prongs have come to be known as the "basis of knowledge" and "veracity" prongs, respectively. For nearly 20 years both prongs needed to be satisfied. Then in *Illinois v. Gates*, a case discussed shortly, the Court abandoned this two-pronged ruling.

SPINELLI v. UNITED STATES
393 U.S. 410 (1969)

FACTS

A search warrant was issued on the basis of an FBI agent's affidavit that alleged (1) that an informant had told the agent that Spinelli was taking illegal bets over the phone; (2) that surveillance had led the agent to conclude that Spinelli had gone to the apartment where the phone was located several times within a five-day period; and (3) Spinelli was a known gambler. Spinelli was convicted of traveling in interstate commerce with the intention of committing illegal gambling activities, and the U.S. Supreme Court granted certiorari.

ISSUE

Can a search warrant based on tips from an informant be issued when the affidavit on which it is based contains insufficient information concerning how the informant learned of the suspected criminal activity in question?

HOLDING

No. However, insufficient information with regard to Aguilar's "basis of knowledge" claim can be overcome if the informant's tip describes the accused's criminal activity in enough detail that the magistrate knows that he or she is relying on more than a rumor.

RATIONALE

"We conclude, then, that in the present case the informant's tip—even when corroborated to the extent indicated—was not sufficient to provide the basis for a finding of probable cause. This is not to say that the tip was so insubstantial that it could not properly have counted in the magistrate's determination. Rather, it needed some further support. When we look to the other parts of the application, however, we find nothing alleged which would permit the suspicions engendered by the informant's report to ripen into a judgment that a crime was probably being committed."

CASE SIGNIFICANCE

Spinelli is important because it reaffirmed *Aguilar*. The Court concluded that the affidavit supplied by the FBI agent contained insufficient information concerning the "underlying circumstances" of the alleged gambling activity. That is, the affidavit failed to describe how the informant obtained his information. The Court concluded that Spinelli's past gambling activities were irrelevant to the probable cause determination, leaving the agent with the less than incriminating evidence that Spinelli repeatedly spoke on the phone. *Spinelli* was decided five years after *Aguilar*. Since both cases reinforced the same issues, they came to constitute what is now called the *Aguilar-Spinelli* test. In the next case, however, that test was all but abandoned.

ILLINOIS v. GATES
462 U.S. 213 (1983)

FACTS

In mid-1978, the Bloomingdale, Illinois Police Department received an anonymous letter informing them that Gates and his wife made a living selling drugs, that they bought most of their drugs in Florida, and that on a certain date Gates would be driving back from

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Florida with a car full of drugs. A police officer obtained Gates' address and set forth to corroborate the various details (there were others) set forth in the anonymous letter. The officer found that Gates had flown down to Florida, stayed the night in a hotel, and driven north the next day in a car with Illinois license plates. The letter and the information resulting from the officer's investigation were set forth in an affidavit in support of a search warrant. A search warrant was issued. Officers serving the warrant found drugs in Gates' house and car. He was arrested and charged with violating state drug laws, and the U.S. Supreme Court granted certiorari.

ISSUE

Does an anonymous letter containing no information as to the informant's reliability and basis of knowledge coupled with corroboration by a police officer provide probable cause for obtaining a search warrant?

HOLDING

Yes. The two-pronged *Aguilar* test, requiring that police officers demonstrate informants' reliability and basis of knowledge, is abandoned in favor of a "totality of circumstances" analysis. A deficiency in one prong can be satisfied by a strong showing in the other.

RATIONALE

"... [W]e conclude that it is wiser to abandon the 'two-pronged test' established by our decisions in *Aguilar* and *Spinelli*. In its place we reaffirm the totality-of-circumstances analysis that traditionally has informed probable cause determinations. . . . The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."

CASE SIGNIFICANCE

Gates is significant because it simplifies the probable cause analysis. If a police officer cannot adequately demonstrate an informant's reliability but can demonstrate the informant's basis of knowledge with a strong showing, then probable cause can be established. The reverse is also true; a weak showing in the "basis of knowledge" prong can be counteracted by a strong showing as to the informant's past reliability. ◇

DISCUSSION QUESTIONS

1. Discuss sources of information that would lead an officer to conclude that probable cause to *arrest* is present.
2. Discuss sources of information that would lead an officer to conclude that probable cause to *search* is present.
3. What does probable cause mean from a practical standpoint? That is, explain probable cause in simple, nonlegal terminology that could be understood by anyone.
4. What happens if probable cause to arrest or search is not present? Are the available remedies (e.g., exclusionary rule, civil liability) sufficient?
5. Our criminal justice system requires proof beyond a reasonable doubt for a finding of guilty in a criminal trial. Probable cause is a substantially lower standard. What explanations can you offer for this apparent discrepancy?
6. Was the Supreme Court's decision in *Illinois v. Gates* a smart one? Who most benefits most from the Court's decision in that case? ◇