PROBABLE CAUSE DETERMINATIONS

Duties of Magistrates

WARRANTLESS ARRESTS

- A magistrate must determine if probable cause exists to believe that a person who was arrested without a warrant committed the offense he/she was arrested for
  - Within 24 hours for a misdemeanor
  - Within 48 hours for a felony
- If a PC hearing does not occur within the specified time frame, the defendant must be released on bond. CCP 17.033
- If the magistrate finds probable cause, then the suspect is given his/her rights

THAT'S IT!!!

ARREST PURSUANT TO A WARRANT

- Probable Cause has already been determined by the magistrate who issued/signed the warrant
  - No new determination of whether or not there was PC for the arrest
- Proceed with explaining the suspect's rights

THAT'S IT!!!

DETERMINING PROBABLE CAUSE

PROBABLE CAUSE – WHAT IS IT?

- An officer has probable cause when facts and circumstances make it more likely than not that:
  - A certain person (the suspect)
  - Has committed or is committing a certain crime.
- "Probable cause exists when facts and circumstances within the officer's knowledge, and about which the officer had reasonably trustworthy information, cause a person of reasonable caution to believe that an offense has been or is being committed." *Carroll v. U.S.*, 267 U.S. 132.
- PC is more than mere suspicion, but less than beyond a reasonable doubt
  - Facts that justify an officer in detaining a suspect can develop into probable cause and escalate a detention into an arrest
  - Example: seeing drugs in plain view during a traffic stop

PROBABLE CAUSE – HOW IS IT DETERMINED?

- Affidavit / Complaint submitted by the officer
  - May be one document, may be two
- Based only on the affidavit - no additional facts from the officer
  - "Four Corners Rule"
- An affidavit may contain hearsay and other information not admissible under the Rules of Evidence and a magistrate may use that information in making his determination

PROBABLE CAUSE – HOW IS IT DETERMINED?

- Affidavit must do more than allege commission of an offense, it must contain facts that establish each element of the offense
  - Must articulate the who, what, when, where, and how do you know
    - Not a charging instrument so it doesn't need to track the statute word for word
  - Based on facts, not opinions or conclusory statements
- Sworn to and signed by the officer
  - Made before any officer authorized by law to administer oaths
    - Magistrate or another officer

WHAT HAPPENS IF PC NOT FOUND?

- Release the defendant – no bond set
- If a magistrate releases a defendant due to lack of PC, the case is not dismissed or barred from prosecution
  - Magistrate just saying that based on the affidavit, there is not enough information to keep the defendant in custody
  - State will have to get an arrest warrant if they decide to pursue charges

WHAT THE MAGISTRATE DOESN'T DETERMINE

- Magistrate does not determine suppression issues or validity of arrest
  - That's the trial court's job
- Unlawful arrest does not prohibit the State from trying and convicting a defendant. The appropriate sanction is exclusion of the evidence. *Ker v. Illinois*, 119 U.S. 436 & *U.S. v. Peltier*, 422 U.S. 531

EXAMPLES

Probable Cause or Not?

OFFICER PC STATEMENT #1

- "On December 11, 2015 approximately 7:30 PM I, Box County Deputy Bill Russel, responded to the 213 Adobe Drive, for a domestic assault. The defender was identified as Tony Marcus DOYLE (W/M DOB: 12/21/1984). After looking at the victim's (Sonya Lynn Doyle) injuries, two puncture wounds to her left arm and her description of the incident. DOYLE was arrested for Assault Family Violence (PC 22.01)"

OFFICER PC STATEMENT #2

Possession of Controlled Substance / Possession of Drug Paraphernalia

"On October 22, 2017 at approximately 2:31am, I Thunder County Deputy Darren Regal initiated a traffic stop at 132 Joy St. in Thunder City, Texas. I initiated the traffic stop after I observed the driver of a blue Dodge Ram fail to stop at the stop sign at the intersection of Blue Ave. and Joy St. William Wiley W/M DOB: 04/19/85 was identified as the driver and single occupant of the 2013 Blue Dodge Ram (TX: FVF 2455) As I was standing near the driver side door of the Dodge, speaking with William Wiley, I observed a small clear bag containing a white crystal like substance I believed to be methamphetamine, based on my training and experience, sitting on the dashboard. I also noticed William Wiley was speaking rapidly and he had a large amount tools and flashlights within reach of his person. I told William Wiley to exit the vehicle and stand with Deputy Regan Flores while I searched the blue Dodge based on probable cause. After searching the vehicle, I recovered the bag I originally observed on the dash board and I located a glass pipe with a brown and white burned substance in the tubular portion of the pipe I believed to be burned methamphetamine. I utilized a separate field methamphetamine test on both items after they were recovered. The field methamphetamine test indicated the substance in the bag was methamphetamine. The field methamphetamine test indicated the residue in the pipe was methamphetamine. William Wiley was arrested for Possession of a Controlled Substance and Possession of Drug Paraphernalia. William Wiley was then transported to the Thunder County jail without incident or injury."

OFFICER PC STATEMENT #3

Assault Family Violence (causing bodily injury)

" On 04/04/17, at 4:40pm, I responded to domestic disturbance at 404 Choctaw. Upon arrival it was found that the victim (Irma Brown W/F DOB 06/08/67) had visible injuries to her left eye. Irma stated her husband (Frank Brown W/M DOB 08/17/58 hit her in the left eye. Irma completed a field witness affidavit. Frank was later located at the Lone Star Bar at 7200 FM 1181. Frank was read the Miranda warnings and he refused to provide any type of statement. Frank had a visible laceration on his right ring finger. Frank was arrested for assault family violence and transported to the Greenland County Jail."

OFFICER PC STATEMENT #4

Possession of Marijuana < 2 oz

"On 01/01/15, at approximately 5:00 am, I was dispatched to the Quick Stop convenience store in reference to a suspicious person. Upon my arrival, I made contact with the store clerk Glen Noble W/M 12/30/58. Glen informed me there was a male subject in the parking lot wearing a red shirt and a white baseball cap who he believed was stealing items from the store. I located the individual matching the description. The suspect was sitting in a gold 1994 Pontiac Grand Am bearing TX license plate 654 LEG. I told the suspect (Hank Bowie W/M DOB 08/09/99) to exit the vehicle so I could speak with him. I patted Hank down for weapons. As I was patting Hank down for weapons, I found a small bag containing a green leafy substance I believed to be marijuana based on my training and experience. The bag was located in the front right pocket of Hank's blue jeans. I read Hank the Miranda Warnings. Hank stated he understood his rights and would answer questions pertaining to the reported theft. Hank denied taking any items from the store and stated he was probably pulling his pants up which may have looked like he was stealing. I searched the Pontiac based on probable cause after locating the marijuana on Hank's person after he exited the vehicle. I did not locate any stolen items in the vehicle. I returned to the clerk who stated he did not know what was stolen, but it appeared items may have been removed from the shelf. I arrested Hank for Possession of Marijuana < 2 oz. Hank was transported to the Volley County Jail."

OFFICER PC STATEMENT #5

Assault Family Violence

"On December 18, 2009, at approximately 9:30pm, I Officer Roy McCoy, responded to a reported domestic violence call at #9 Oak Drive in Oakdale Hills, Texas. Upon my arrival, I observed a male subject, later identified as Marshawn Hill B/M DOB 09/18/92 standing in the front yard. Marshawn Hill was grasping his right hand and appeared to be in pain. I observed visible swelling and discoloration on Marshawn's right hand on four of his knuckles. I also smelled the strong odor of an alcoholic beverage coming from Marshawn's breath. Marshawn appeared to be heavily intoxicated and refused to speak with Officers on scene. Marshawn's wife, Linda Hill W/F DOB 04/10/89, was located inside of the residence sitting near the bathroom sink in the master bedroom. I observed what appeared to be fresh blood drops leading from the main entrance to the master bathroom. Linda was bleeding from her nose. Linda stated she was in a verbal argument and Marshawn was actively walking out of the front door when she decided to follow him. Linda stated Marshawn shut the main entry door and accidently caused the door to hit her in the face. Linda said she did not know how Marshawn injured his hand. Linda later said she thought Marshawn might have punched something because he was angry. Linda said she did not feel comfortable completing a written statement because she did not want Marshawn to lose his job. Marshawn was arrested for Assault Family Violence Causing Bodily Injury. Marshawn was transported to Goatherd County Jail without incident or injury."

OFFICER PC STATEMENT #6

Driving While License Invalid (Enhanced)

"On Jul 8, 2018 I Officer Josh DeShield initiated a traffic stop at 4th Avenue and 17th St after observing a gray 2006 Crown Victoria TXLP: 754 VTT fail to signal a left turn at the intersection of 4th and 17th. I identified the driver Juan Gutierrez H/M DOB 08/14/79 and found him to be operating the motor vehicle with an invalid driver's license. I requested dispatch check to see if he had any previous convictions for DWLI. Dispatch advised he had two previous convictions of DWLI. I arrested Gutierrez for DWLI with previous convictions. Nothing further to report."