

disregard must point out specifically with supporting reasons the portion of the warrant affidavit that is claimed to be false. It also must be accompanied by an offer of proof, including affidavits or sworn or otherwise reliable statements of witnesses, or a satisfactory explanation of their absence. If these requirements as to allegations and offer of proof are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required, but if the remaining content is insufficient, the defendant is entitled under the 4th and 14th Amendment to a hearing. If, after a hearing, a defendant establishes by a preponderance of the evidence that the false statement was included in the affidavit by the affiant knowingly and intentionally, or with reckless

disregard for the truth, and the false statement was necessary to the finding of probable cause, then the search warrant must be voided and the fruits of the search excluded from the trial to the same extent as if probable cause was lacking on the face of the affidavit. Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L. Ed. 2d. 667 (1978).

The applicant further argues and testified that Officer J. Faulkenberry misled the Magistrate when he stated both the applicant Duane Harrison and his co-defendant were found in possession of a kilogram of cocaine white at 1162 Shanadoah Cir. Rock Hill, SC, York County. The search warrant affidavit and discovery material failed to demonstrate that applicant had any ~~drugs~~ drugs in his possession. Applicant argues there is no mention of Officer Faulkenberry having any first-hand knowledge of what he actually testified

to before the Magistrate and Swore to under oath to the Magistrate. Applicant argues officer Faulkenberry knowingly and intentionally with reckless disregard for the truth made false statements in the Search Warrant affidavit made on November 1, 2012. Therefore the evidence of Cell phones and drugs should've been suppressed because the evidence was obtained illegally in violation of the 4th and 14th Amendment. Had a challenge by trial counsel been made and ruled on, the outcome of this case would have been different and therefore the applicant was prejudiced. Moreover the no contest plea was involuntary and applicant would have continued to trial had motion been raised. Applicant asserts he was denied right to effective assistance of counsel and therefore his plea conviction should be overturned. See Hill v. Lockhart 474 US 52.

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