

On October 22, a police officer submitted an application for a warrant to search a man's residence for cocaine. In the application, the officer stated under oath that he believed there was cocaine at that location because of information supplied to him on the morning of October 22 by an informant. He described the informant as a cocaine user who had previously supplied accurate information concerning the use of cocaine in the community and summarized what the informant had told him as follows: the previous night, October 21, the informant was in the man's house. The man gave her cocaine. She also saw three cellophane bags containing cocaine in the man's bedroom.

The warrant was issued and a search of the man's residence was conducted on October 22. The search turned up a quantity of heroin but no cocaine. The man was arrested and charged with possession of heroin. The man moved to suppress the use of the heroin as evidence, contending that the informant was not in his residence on October 21 or at any other time.

If, after hearing evidence, the judge concludes that the statement in the application attributed to the informant is incorrect and grants the motion to suppress, what will be the most likely reason?

- A. The application contained a material statement that was false.
- B. The court also found that the informant's statement was a deliberate lie.
- C. The court also found that the officer knew the statement was false.
- D. The informant's statement was false and no cocaine was found in the house.

### **Explanation:**

A **search warrant** is **presumptively valid** if it (1) is issued by a neutral and detached magistrate (ie, judge) based on probable cause, (2) is supported by a sworn oath or affidavit, and (3) particularly describes the place to be searched and items to be seized. However, a defendant may challenge that presumption and **invalidate the warrant** if he/she can prove by a preponderance of the evidence that:

the application contains a **false statement necessary** to the **finding of probable cause** *and*

the officer submitting the application **knew the statement was false** or recklessly disregarded its falsity.

Any evidence seized pursuant to an invalid search warrant should be suppressed at trial.

Here, the officer's application for a search warrant stated that he believed there was cocaine at the man's residence based on information supplied by an informant. The trial judge concluded that the statement in the application attributed to the informant was incorrect (false statement). And that statement was the only basis for the officer's application (necessary to finding of probable cause). Therefore, the motion to suppress will likely be granted if the court *also* finds that the officer knew the statement was false (or recklessly disregarded its falsity) **(Choice A)**.

**(Choices B & D)** The fact that the informant's statement was a deliberate lie and that no cocaine was found in the house helps show that the application contains a false statement. But the search warrant would only be invalid if the officer knew, or recklessly failed to determine, that the statement was false. Without such evidence, the court would not grant the motion to suppress.

### **Educational objective:**

A search warrant is invalid if the preponderance of the evidence shows that (1) the application contains a false statement necessary to the finding of probable cause and (2) the officer who submitted the application knew that the statement was false or recklessly disregarded its falsity.

### **References**

U.S. Const. amend. IV (prohibition against unreasonable searches and seizures).

Franks v. Delaware, 438 U.S. 154, 156 (1978) (holding that an officer's knowing or reckless inclusion of a material false statement in an application for a search warrant invalidates the warrant).

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**Invalid search warrant**  
(requires suppression of seized evidence)

