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Fourth Circuit Court of Appeals

(Note: You may access the court's opinion by clicking on the case name)

Court Rules That Officer's Omission of Allegedly Exculpatory Evidence from Search Warrant's Affidavit Was Not Material to Affect the Issuing Official's Finding of Probable Cause to Issue Warrant

[United States v. Wharton](#), ___ F.3d ___, 2016 WL 6135248 (4th Cir. Oct. 21, 2106). The defendant and her husband were convicted in a Maryland federal district court of various federal fraud-related charges. Before the district court trial she made a motion to suppress evidence seized pursuant to a search warrant seeking to obtain evidence about her husband at the home in which she and her husband lived. She alleged that the officer's affidavit for the search warrant recklessly omitted material exculpatory evidence that would have shown that she and her husband occupied different parts of the house, and her husband lived only in the basement of their house. Thus if this evidence had been included in the affidavit, probable cause would not have existed to search in other places in the house where the officer found evidence that was used to convicted both her and him.

The district court judge found that although the officer recklessly omitted the information from his affidavit, its omission did not violate the Fourth Amendment because it was not material to a finding of probable cause when other information in the affidavit showed that the couple in fact shared common areas. The fourth circuit affirmed the district court's ruling. It examined the facts alleged in the affidavit and found that nothing in the omitted information demonstrated, or even suggested, that the husband lacked access to the house's common areas. The court concluded that even with the omitted information, the affidavit provided the issuing judicial official with a substantial basis for concluding that probable cause existed that the husband would utilize common areas and leave in them evidence of his own criminal activity. [See the court's discussion of the relevant legal principles under *Franks v. Delaware*, 438 U.S. 154 (1978), and other cases.]