

9.19 Particular Rights—Fourth Amendment—Unreasonable Search— Judicial Deception

As previously explained, the plaintiff [name] has the burden of proving that the act[s] of the defendant[s] [insert name[s] of defendant[s]] deprived the plaintiff [name] of particular rights under the United States Constitution. In this case, the plaintiff [name] alleges the defendant[s] [insert name[s] of defendant[s]] deprived the plaintiff [name] of rights under the Fourth Amendment to the Constitution when the defendant[s] [insert name[s] of defendant[s]] intentionally or in reckless disregard of the truth made one or more material misrepresentations or omissions in a search warrant affidavit submitted to a judge.

Under the Fourth Amendment, a person has the right to be free from an unreasonable search of the person's [person] [residence] [vehicle] [insert other object of search]. In general, a search of a [person] [residence] [vehicle] [insert other object of search] is unreasonable under the Fourth Amendment if the search is not conducted pursuant to a search warrant. A search warrant is a written order signed by a judge that permits a law enforcement officer to search a particular location and seize specific items. To obtain a search warrant, a law enforcement officer must show probable cause that a crime has been committed and that items related to that crime are likely to be found in the place specified in the warrant. In deciding whether to issue a search warrant, a judge generally relies on the facts stated in a warrant affidavit signed by a law enforcement officer.

To prove the defendant[s] [insert name[s] of defendant[s]] deprived the plaintiff [name] of this Fourth Amendment right, the plaintiff [name] must prove the following additional elements by a preponderance of the evidence:

First, the defendant[s] [insert name[s] of defendant[s]] submitted to a judge a warrant affidavit that contained one or more misrepresentations or omissions material to the finding of probable cause; and

Second, the defendant[s] [insert name[s] of defendant[s]] made those misrepresentations or omissions either intentionally or with reckless disregard for the truth.

To show materiality in the context of this claim, the plaintiff [name] must demonstrate that the judge would not have issued the warrant if the false information had been excluded (or redacted) or if the omitted or missing information had been included (or restored).

“Probable cause” exists when, under all of the circumstances known to the officers at the time, an objectively reasonable police officer would conclude there is a fair probability that contraband or evidence of a crime will be found in the place to be searched; a fair probability that the item to be seized is contraband or evidence of a crime; or a fair probability that the person to be seized has committed or was committing a crime.

In the context of this claim, a “reckless disregard for the truth” means highly unreasonable conduct that is an extreme departure from ordinary care, presenting a danger of misleading a reasonable judge into concluding that probable cause has been established, when that danger is either known to the defendant[s] or is so obvious that the defendant[s] must have been aware of it.

Comment

Use this instruction only in conjunction with the applicable elements instruction from Instructions 9.3-9.8.

See Bravo v. City of Santa Maria, 665 F.3d 1076, 1083-84 (9th Cir. 2011) (stating elements of a civil rights claim based on judicial deception in procuring search warrant); *Smith v. Almada*, 640 F.3d 931, 937 (9th Cir. 2011) (discussing false arrest claim based on judicial deception in procuring an arrest warrant and also discussing materiality requirement); *Blight v. City of Manteca*, 944 F.3d 1061, 1069 (9th Cir. 2019) (stating elements of judicial deception claim including materiality requirement).

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