

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED July 28, 2026 5:12 PM FILING ID: ED7C9F15D2DB9 CASE NUMBER: 2022CV33434
Plaintiff: RUBY JOHNSON, v. Defendant: GARY STAAB, an officer of the Denver Police Department, in his individual capacity, and GREGORY BUSCHY, an officer of the Denver Police Department, in his individual capacity.	▲ COURT USE ONLY ▲
David Murphy, #20928 Assistant City Attorneys Denver City Attorney's Office, Litigation Section 201 West Colfax Ave., Dept. No. 1108 Denver, CO 80202-5332 David.Murphy@denvergov.org Telephone: (720) 913-3100 Facsimile: (720) 913-3155 Attorneys for Defendant Gregory Buschy	Case Number: 2022CV33434 Courtroom: 269
DEFENDANT GREGORY BUSCHY'S MOTION FOR SUMMARY JUDGMENT	

Defendant, Sergeant Gregory Buschy ("Defendant Buschy"), through undersigned counsel, pursuant to C.R.C.P. 56(c), moves this Court for summary judgment in his favor on Plaintiff's sole claim, unlawful search.

Certificate of Compliance

Undersigned counsel certifies that he conferred with Plaintiff's counsel regarding the relief requested in this motion. Plaintiff opposes the Motion.

I. Introduction

On January 3, 2022, a truck containing weapons, ammunition, a cellphone, and other personal property was stolen from the Hyatt Regency Hotel in downtown Denver. Later that day the truck owner, Jeremy McDaniel, utilized an Apple cellphone tracking application called Find My iPhone (the “App”) on one of his iPhones, to track the location of another iPhone which had been left in the truck at the time of the theft. After observing the stolen phone ping at different locations in east Denver, he saw that it began to ping at a particular home in the Montbello neighborhood and continued to ping at that same location for about 4 ½ hours before it ceased pinging. He rented a vehicle and drove by the home but did not see his truck parked outside the home, so assumed it was parked inside the garage.

The following morning Denver Police Department (“DPD”) Sergeant Gregory Buschy assigned the case to DPD Detective Gary Staab. Det. Staab investigated the matter, spoke with Mr. McDaniel about his efforts the day before, and spoke with District Attorney Ashley Beck about whether the delay of 17 hours since the phone had last pinged would negate probable cause. When she confirmed there was probable cause for the search, he prepared a Search Warrant (“Warrant”) for the home where the phone had last pinged. *See Exhibit A.* He also prepared an Affidavit In Support of Search Warrant (“Affidavit”). *See Exhibit B.* The home at issue was Plaintiff’s home. The Affidavit and Warrant were approved by Sgt. Buschy, the District Attorney, and then by County Court Judge Beth Faragher.

Because the theft involved several guns and ammunition, Det. Buschy asked Denver SWAT to assist with the execution of the Warrant. SWAT called Plaintiff out of the home, and the home was searched for approximately ½ hour before the search was ended. No stolen property

was recovered. Plaintiff alleges the search was unlawful because the Affidavit contained false statements and omitted material information which, if corrected, negated probable cause for the search.

II. Procedural Background

Prior to the first trial Defendants moved for summary judgment, arguing there were no materially false statements or omissions in the Affidavit, and certainly none made intentionally or with reckless disregard for the truth. At Plaintiff's insistence, and over Defendants' objections, the trial court applied the incorrect legal standard when analyzing and denying the Defendants' original summary judgment motions, concluding that negligent or good faith mistakes in an affidavit can give rise to a constitutional violation. Even when applying Plaintiff's lenient and erroneous legal standard, the trial court was cautious, noting Plaintiff's argument "rests on a fine parsing of the language in the affidavit," and created a "close call" and "very close determination" whether Plaintiff had pled a viable cause of action. At Plaintiff's insistence, the trial court thereafter improperly instructed the jury to apply this same erroneous legal standard to its deliberations.

The Court of Appeals reversed the trial court and set aside the verdict. *Johnson v. Staab*, 571 P.3d 939, 941 (Colo.App. 2005), *cert denied*, 2026 WL 125124 (Jan. 12, 2026). The Court held that "a warrant may be supported by probable cause even if the supporting affidavit contains negligent or mistaken misstatements." *Id.* at 945. In rejecting Plaintiff's argument, the Court concluded that proof of a Fourth Amendment violation in this context requires a showing that there were material misstatements in or omissions from the affidavit that were made intentionally or with reckless disregard for the truth, without which the affidavit would not establish probable

cause. *Id.* It held the original trial court committed reversible error when it failed to “instruct the jury to excise only intentional or reckless misstatements or add back only those facts that were intentionally or recklessly omitted.” *Id.* at 946. It is within this rubric that Plaintiff’s claim must be analyzed. Whereas it was a “close call” and “very close determination” whether Plaintiff had plead a viable claim when utilizing the wrong legal standard, when applying the proper legal standard, it is beyond doubt that the claim must now be dismissed.

III. **Affidavit Statements At Issue**

Because the erroneous jury instructions necessitated reversal, the Court of Appeals did not analyze whether the Affidavit actually contains any materially false statements or omissions as alleged by Plaintiff. It did, however, specifically enumerate the six (6) statements in the Affidavit which Plaintiff alleges were materially false and must be stricken, together with the ten (10) factual statements which Plaintiff alleges were wrongfully omitted and must be inserted into the affidavit. *See Johnson*, 571 P.3d at 942-43. Each of those statements is reproduced below.

Alleged False Statements:

1. The victim “reported the first ping occurred on 01/03/2021 at 1124 hours.”
2. The victim reported “the last ping was on 01/03/2021, at 1555 hours.”
3. “During this time the phone had not moved.”
4. The victim stated that the stolen truck “could be in the garage.”
5. “Victim had used iPhone app on other occasions....”
6. “A photo of the app shows a red dot, signifying the phone being inside the house....”

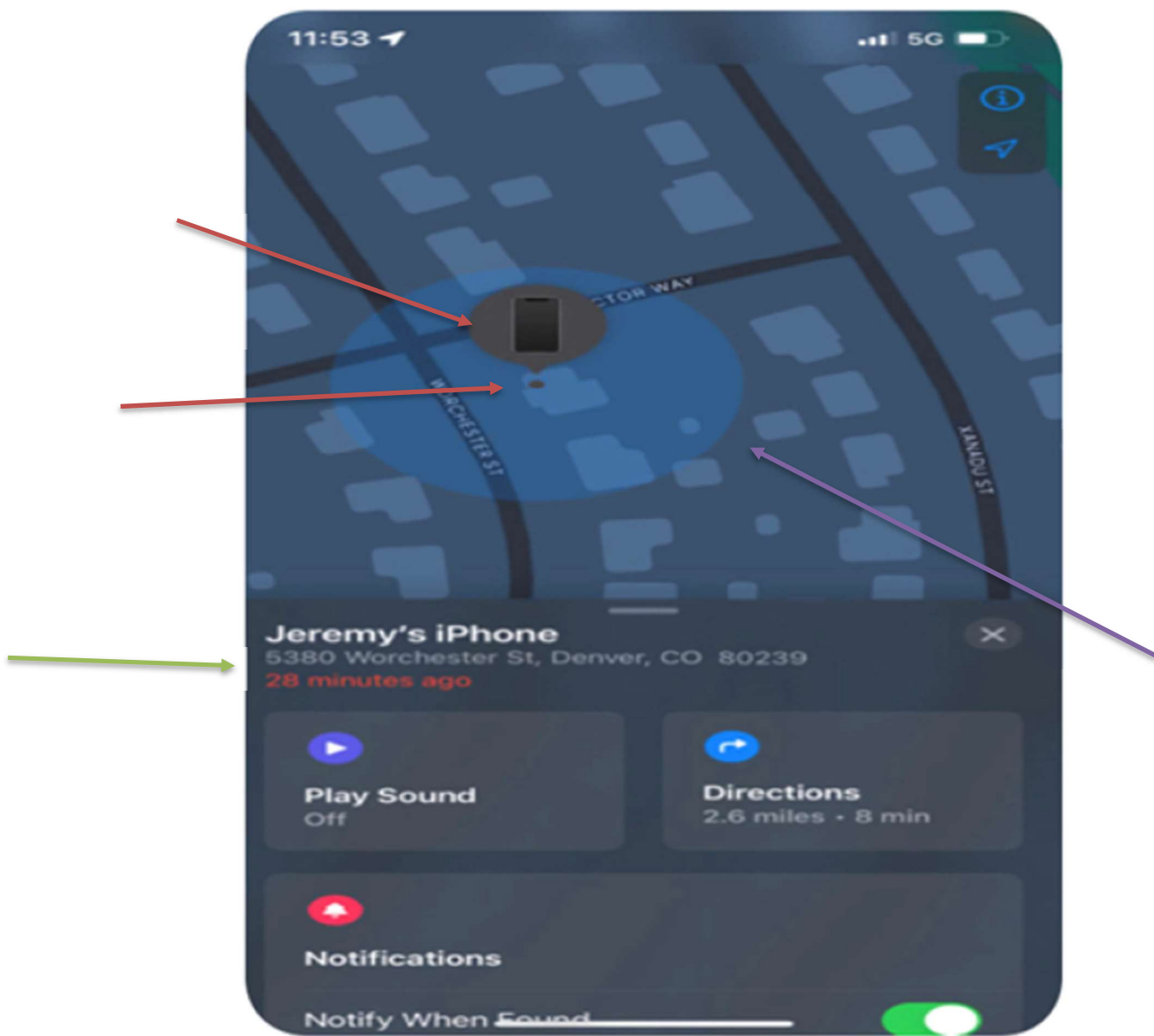
Alleged Omitted Statements:

1. Staab believed that there was not probable cause when he prepared the affidavit.

2. Buschy had the same concerns about probable cause.
3. Staab and Buschy were concerned about probable cause when they called the deputy district attorney and thought she would tell them there was not probable cause.
4. The phone pinged all over Denver the day the truck was stolen.
5. Staab had no experience with, training on, or knowledge about the App he was relying on.
6. Buschy had no experience with, training on, or knowledge about the App he was relying on.
7. The truck was not at the house.
8. Staab never considered Johnson, a seventy-eight-year-old woman, to be a suspect.
9. While doing surveillance at the house, officers saw no suspicious activity.
10. The victim reported to Staab that later in the morning after the truck was stolen, someone tried to use his wife's debit card online.

IV. **Find My App**

This case largely centers on the use of the Find My App, which can be used to track one Apple device from a different Apple device. The App provides overhead imagery of the location of the lost or stolen device. Here, during the investigation of the theft the following morning, Mr. McDaniel sent Det. Staab and Sgt. Buschy a screenshot of the overhead imagery that he had received from the App the day before. Det. Staab pasted a copy of that screenshot directly into the first page of the Affidavit so the reviewing District Attorney and/or Judge could view it themselves. Below is a copy of the screenshot sent by Mr. McDaniel.



The red arrows depict the dot and cellphone icon generated by the App to indicate the location of the stolen cellphone. The green arrow indicates the address which the App associated with that same location. That was Plaintiff's address. The screenshot shows a time of 11:53 and also indicates the stolen phone began pinging at that location 28 minutes earlier, meaning starting at

approximately 11:24 am. Nonetheless, Plaintiff argues the blue circle (purple arrow) indicates the margin of error for the App and indicates Plaintiff's home was only one possible place where the stolen phone may have been located within that blue circle.

V.
Undisputed Facts

1. On January 3, 2022, at approximately 6:45 am, a white truck belonging to Jeremy McDaniel was stolen from the Hyatt Regency hotel located at 650 15th St., Denver, CO 80202. Second Amended Complaint, ("Complaint"), ¶¶12-13. The theft was captured on surveillance cameras. *Id.*

2. At approximately 11 am on January 3, 2022, Mr. McDaniel reported to DPD Officer Chris Randall that the stolen truck contained several firearms, including a tactical military style rifle, cash, drones, and an iPhone 11. *Id.* at ¶¶ 14-15.

3. Det. Staab, a 28-year DPD veteran, is a detective with DPD's District 6. **Exhibit C**, 2/27/24 Trial Testimony of Det. Staab, 215:22-25, 216:1-4.

4. Sgt. Buschy, a 27-year DPD veteran, is a sergeant with DPD's District 6. **Exhibit D**, 2/28/24 Trial Testimony of Sgt. Buschy, 54:14-25.

5. On January 4, 2022, Sgt. Buschy assigned Mr. McDaniel's stolen property case to Det. Staab to conduct a follow-up investigation. *Id.* at 62:18-21.

6. At approximately 8:45 am, on January 4, 2022, Det. Staab spoke with Mr. McDaniel about the thefts. **Ex. B**, Affidavit, p.3; **Ex C**, 2/27/24 Trial Testimony of Det. Staab, 224:2-5.

7. During the midst of the phone call with Mr. McDaniel, Det. Staab begin recording the conversation in order to help himself remember the information, dates and times being discussed by Mr. McDaniel. **Ex. C**, 2/27/24 Trial Testimony of Det. Staab, 232:15-25, 233:1-4; **Ex E**, Partial

recorded call with Mr. McDaniel.

8. Mr. McDaniel informed Det. Staab that the day the truck was stolen, January 3, 2022, he had used the “Find My iPhone” App on his cellphone to try and locate the stolen iPhone in his truck. **Ex. B**, Affidavit, p.3; **Ex. C**, 2/27/24 Trial Testimony of Det. Staab, 225:13-21.

9. Mr. McDaniel advised Det. Staab that on January 3, 2022, at approximately 11:24 am the stolen iPhone started pinging at the address of 5380 N. Worchester St., Denver, CO 80239. **Ex. B**, Affidavit, p.3¹; **Ex C**, 2/27/24 Trial Testimony of Det. Staab, 231:16-21; **Ex. E**, Recorded Call, at 0:00:01-12.

10. When Det. Staab wrote in the Affidavit that the “first” ping occurred at Plaintiff’s home, he was referring to the first time the phone had pinged at Plaintiff’s home, not the first time ever that the stolen phone had pinged. **Ex. D**, 2/28/24 Trial Testimony of Det. Staab, 35:17-25, 36:1-12.

11. Mr. McDaniel advised Det. Staab that he rented a car and drove by the Plaintiff’s home and that the stolen iPhone was still pinging at that address. **Ex. B**, Affidavit, p.3; **Ex. C**, 2/27/24 Trial Testimony of Det. Staab, 307:9-23.

12. Mr. McDaniel informed Det. Staab he did not see the stolen truck outside the Plaintiff’s home when he drove by but believed it could be located in the garage. *Id.*; *see also* **Ex. D**, 2/28/24 Trial Testimony of Det. Staab, 42:14-24.

13. Mr. McDaniel advised Det. Staab that the stolen iPhone continued to ping at the Plaintiff’s address for several more hours, until its last ping at 3:55 pm, on January 3, 2022. **Ex. B**, Affidavit,

¹ Det. Staab clarified that in the Affidavit he mistakenly typed the year as 2021 when, in fact, he meant to type in the year as 2022. **Ex. D** at 18:4-13.

p.3; **Ex. C**, 2/27/24 Trial Testimony of Det. Staab, 313:18-25, 314:1-8; **Ex. E**, Recorded Call, at 0:00:01-2:18.

14. Mr. McDaniel reported to Det. Staab his belief the stolen phone had probably died at the point it stopped pinging. **Ex. B**, Affidavit, p.3; **Ex. E**, Recorded Call, at 0:01:39.

15. Mr. McDaniel provided DPD with a screenshot from his iPhone App verifying what he reported to Det. Staab about the stolen phone's location, which Det. Staab then pasted onto page one of the Affidavit. **Ex. F**, Screenshot; **Ex. B**, Affidavit, p.1.

16. The screenshot shows a dot and phone icon directly on Plaintiff's home and identified her specific address. *Id.*

17. Det. Staab spoke with his supervisor, Sgt. Buschy, and voiced his concern that approximately 17 hours passed between the last cellphone ping at the home and the time the Warrant was being prepared, potentially making the evidence stale. **Ex. D**, 2/28/24 Trial Testimony of Sgt. Buschy, 64:4-7, 18-25; 65:1-3.

18. Sgt. Buschy advised Det. Staab to speak with the District Attorney's Office for advice. *Id.*

19. Det. Staab spoke with Deputy District Attorney Ashley Beck about his concerns with possible staleness, and she assured him that these facts did not give rise to a staleness problem, and that he was "good with the warrant." **Ex. C**, 2/27/24 Trial Testimony of Det. Staab, 317:12-24; **Ex. G**, 2/29/24 Trial Testimony of Ashley Beck, 134:15-25, 135:1-4.

20. Attorney Beck testified that draft search warrant affidavits are presented to the DA's office for review by either a Deputy DA or Chief DA to ensure there is probable cause and that the affidavit is legally sufficient to be able to move forward with its execution. **Ex. G**, 2/29/24 Trial Testimony of Ashley Beck, P99:12-25, 100:1-17.

21. When Det. Staab continued to express concerns regarding the staleness, Sgt. Buschy then called Attorney Beck to confirm the facts and confirm her understanding that there was probable cause to seek a warrant. **Ex. C**, 2/27/24 Trial Testimony of Det. Staab, 318:11-20, **Ex. D**, 2/28/24 Trial Testimony of Sgt. Buschy, 84:6-23, 120:1-14.
22. Attorney Beck asked Sgt. Buschy to speak with Mr. McDaniel about his experience using the phone App. *Id.*
23. Mr. McDaniel informed Sgt. Buschy that he had used the phone App previously, and found it was reliable and brought him to within 5 feet of his wife's lost cellphone. **Ex. D**, 2/28/24 Trial Testimony of Sgt. Buschy, 120:22-25, 121:1-12.
24. Sgt. Buschy relayed the additional information from Mr. McDaniel, and Attorney Beck told Buschy she believed the warrant was "good to go." **Ex. H**, 11/6/23 Deposition of Sgt. Buschy, 61:20-25, 62:1-16.
25. Det. Staab prepared a draft search warrant and affidavit and sent it to Attorney Beck for her review and approval. **Ex. C**, 2/27/24 Trial Testimony of Det. Staab, 267:12-15.
26. Chief Deputy District Attorney, Victoria Sharp, also reviewed the draft Affidavit and Warrant to confirm the existence of probable cause for the Warrant. **Ex. G**, 2/29/24 Trial Testimony of Ashley Beck, 115:16-25, 116:1-11.
27. The revised Affidavit was approved and signed both Det. Staab and Sgt. Buschy, as well as by Attorney Beck. **Ex. B**, Affidavit, pp.3-4.
28. The Affidavit and Warrant, including the Find My iPhone screenshot, were then submitted to the Honorable Judge Beth A. Faragher who approved and signed both documents. **Ex. A**, Warrant, **Ex. B**, Affidavit, pp.4.

29. Neither Det. Staab nor Sgt. Buschy had received training on the use of the Find My iPhone app prior to the preparation of this Affidavit. **Ex. C**, 2/27/24 Trial Testimony of Det. Staab, 250:12-15; **Ex. D**, 2/28/24 Trial Testimony of Sgt. Buschy, 76:9-12.

30. At the time of the execution of the Warrant, both Det. Staab and Sgt. Buschy believed there was probable cause for the search. **Ex. I**, 9/15/23 Deposition of Det. Staab, 203:10-20; **Ex. D**, 2/28/24 Trial Testimony of Sgt. Buschy, 127:2-4.

31. District Attorney Beck had extensive familiarity with this app both in personal use as well as its use in many cases and she knew the app to be incredibly precise. **Ex. J**, 11/7/23 Deposition of Ashley Beck, p. 70:1-71: 12.

32. Attorney Beck would not have signed off the search warrant if she did not believe there was probable cause for the search. *Id.* at 41:7-11; 64:18-23: 121:8-9.

VI.

Legal Argument

THERE IS NO LEGAL BASIS TO AMEND THE AFFIDAVIT BECAUSE IT DOES NOT CONTAIN ANY MATERIAL OMISSIONS OR FALSE STATEMENTS, AND CERTAINLY NONE MADE INTENTIONALLY OR WITH RECKLESS DISREGARD FOR THE TRUTH. AND BECAUSE IT IS SUPPORTED BY PROBABLE CAUSE JUDGMENT SHOULD ENTER AGAINST PLAINTIFF, AS A MATTER OF LAW.

A. Standard of Review

In its decision, the Court of Appeals provided a roadmap for how this Court must address Plaintiff's contention that the Affidavit contains falsities or omissions:

In [*People v. Dailey*, 639 P.2d 1068 (Colo.1982)], the supreme court concluded that **a trial court determines whether the affidavit contains erroneous statements** and, if so, whether 'the source of the error is intentional falsehood or reckless disregard for the truth

on the part of the officer-affiant.’ (citation omitted). **If it finds that the challenging party has shown by a preponderance of the evidence** that the source of the error is intentional falsehood or reckless disregard for the truth, it must strike the false statements from the affidavit. *Id.*

Similarly, in [*People v. Reed*, 56 P.3d 96 (Colo.2002)], the supreme court applied the *Dailey* test and explicitly differentiated between false statements made intentionally or with reckless disregard for the truth and those made due to negligence or a good faith mistake, stating ‘**it is imperative that the trial court make specific findings why the false statements are in the affidavit: whether the error was intentional, or with reckless disregard for the truth, or due to negligence or a good faith mistake.**’ Statements made negligently or due to a good faith mistake do not require excision from the affidavit. *See id.*

....

[W]e conclude that proof of a deprivation of a constitutional right in this context requires a showing that there were misstatements in or omissions from the affidavit that were intentionally made or made with reckless disregard for the truth, without which the affidavit would not establish probable cause.

Johnson 571 p.3d at 944-45 (emphasis added). Thus, the trial court must find Plaintiff has proven by a preponderance of the evidence that the Affidavit contains false statements or omissions, they are material, were made intentionally or with reckless disregard for the truth, AND they negate probable cause.

This approach is entirely consistent with that adopted by the United States Supreme Court in *Franks v. Delaware*, 438 U.S. 154, 171, 98 S.Ct. 2674, 2684, 57 L.Ed.2d 667 (1978), where the Court held the party challenging an affidavit must show by a preponderance of the evidence that: 1) the search warrant affidavit contained a false material statement or omitted a material fact; 2) the affiant omitted the material fact or made the false statement intentionally, or with reckless

disregard for the truth; and 3) the false statement is material in order to support the finding of probable cause.

A statement is made with a “reckless disregard for the truth” if the person making the statement “entertained serious doubts as to the truth of the statement or acted with a high degree of awareness of its probable falsity.” *Johnson*, 571 P.3d at 946 (quoting *Rosenblum v. Budd*, 2023 COA 72, ¶ 39, 538 P.3d 354). Here, the Affidavit does not require any statements to be excised or added, and supports probable cause.

B. Statements Alleged to be False

The first five of the alleged false statements each pertain to statements which Det. Staab reported in the Affidavit were told to him by Mr. McDaniel:

- Det. Staab stated in the Affidavit that Mr. McDaniel “reported that the first ping occurred on 01/03/21, at 1124 hours”
- Det. Staab stated in the Affidavit that Mr. McDaniel reported “the last ping was on 01/03/2021, at 1555 hours.”
- Det. Staab stated in the Affidavit “during this time the phone had not moved”
- Det. Staab stated in the Affidavit that Mr. McDaniel reported the stolen truck “could be in the garage.”
- Det. Staab stated in the Affidavit that Mr. McDaniel “had used the iPhone app on other occasions”

To the extent Plaintiff alleges falsities in the first two statements because Det. Staab got the year wrong, Det. Staab explained at trial that this was not a false statement but rather simply a typographical error made by virtue of the calendar having just turned from 2021 to 2022. *See Ex. C*, 2/28/24 Trial Testimony of Det. Staab, 18:4-13. That fact was made clear from the heading Det. Staab placed directly above those two statements stating “On 01/04/2022...” *See Ex. B*, Affidavit, p.3 of 4. Therefore, that portion of those two statements was not false. Nor was it material. Moreover, even if both typos in the year were corrected it would not in any way negate probable

cause.

At trial, Plaintiff did attempt to impeach Det. Staab concerning the portion of his statement that Mr. McDaniel had reported the “first” ping of the stolen phone occurred at 11:24 am, by pointing out that the phone had pinged various times prior to that. But Det. Staab flatly rejected the suggestion of a falsity, explaining “It was true that it’s the first ping at Ms. Johnson’s house.” *See Ex. D.* 2/28/24 Trial Testimony of Det. Staab, 35:17-25, 36:1-12. Det. Staab’s explanation makes perfect sense. He prepared the Affidavit for the purpose of seeking a search warrant for Plaintiff’s home, so providing information as to the first time the phone pinged at her home was relevant. Conversely, providing evidence of the phone’s pinging at other locations before arriving at her home would not be relevant to the question of whether there was probable cause to search her home once the phone arrived at and remained at her home thereafter.

Moreover, Det. Staab captured on tape recording some of his conversation with Mr. McDaniel, and which confirms that the statements in the Affidavit were not false. *See Ex. E*, Phone recording. In that call, Mr. McDaniel can be heard clearly stating that the phone began to ping at the same spot beginning at 11:24 am. *Id.* at 0:00:01-03. Det. Staab can be heard repeating that statement, confirming the phone “pinged from 11:24 am?” *Id.* at 0:00:06. Mr. McDaniel confirmed, stating “yeah.” *Id.* at 0:00:09. Det. Staab then asked when was the last ping? *Id.* at 0:00:10. Mr. McDaniel responded “3:55 is the last time it shows me yesterday. I don’t see, it didn’t update since then so it must have, the phone must have died.” *Id.* at 0:01:30. Again, Det. Staab repeated the information, stating “Alright, 11:24 am to 3:55 pm, and give me the address one more time.” *Id.* at 0:01:38. Mr. McDaniel responded “It shows the house on the corner of Worchester and Victor Way, on the southeast side, and the address it shows as far as that map is

concerned, it says 5380 Worchester Street, Denver, Colorado 80239.” *Id.* at 0:01:50.

This conversation makes it clear that Det. Staab and Mr. McDaniel were discussing the time the phone first began to ping at Plaintiff’s home, as well as when it last pinged there. Thus, Plaintiff’s contention that Det. Staab’s use of the term “first” ping was a falsity is simply erroneous and contrary to the undisputed facts. So, too, is Plaintiff’s assertion that it was a falsity for Det. Staab to state in the Affidavit that the last time the phone pinged at Plaintiff’s home was 3:55 pm, as that is precisely what Mr. McDaniel can be heard stating in the recording. There is simply no factual basis for Plaintiff’s assertion that the first two statements were false. Those arguments should be rejected.

The same is true of Plaintiff’s third alleged false statement, i.e., the phone had not moved. In the recording, Mr. McDaniel stated the phone began pinging at Plaintiff’s home at 11:24 am up until its last ping at 3:55 pm. Then Det. Staab repeated that timeframe for the pinging, and asked Mr. McDaniel for the address associated with the pinging “one more time.” It was entirely plausible for Det. Staab to take from this conversation that the phone had started to ping at Plaintiff’s home beginning at 11:24 am, and continued until its last ping there at 3:55 pm, when he believed the phone had died. Further, Mr. McDaniel proceeded to describe the location and address of Plaintiff’s home. Thus, Det. Staab’s statement in the Affidavit that the phone had not moved during this time was entirely accurate based upon what Mr. McDaniel told him. In light of these facts, it cannot be seriously argued that this statement by Det. Staab was false. Nor is there any evidence he made such statement knowing it to be false or having serious doubts as to its truthfulness. Thus, this statement need not be excised from the Affidavit.

The fourth allegedly false statement is that Det. Staab reported in the Affidavit being told

by Mr. McDaniel that he drove by the Plaintiff's home and did not see his truck, but stated "it could be in the garage." That is precisely what Det. Staab testified to at trial. In fact, it was undisputed at trial that this statement was made by Mr. McDaniel to Det. Staab. Plaintiff has never presented evidence to the contrary. Thus, this statement cannot be deemed to be a falsehood, much less one made knowingly or recklessly.

The fifth allegedly false statement is Det. Staab's statement in the Affidavit that Mr. McDaniel had used the App "on other occasions." Plaintiff appears to argue the statement was false because Det. Staab used the plural of the word "occasion" to falsely suggest Mr. McDaniel used the App on multiple prior occasions. Plaintiff's assertion is baseless. For starters, Plaintiff has never presented evidence of different wording by Mr. McDaniel during that particular conversation. Further, in the Affidavit, Det. Staab immediately followed up the comment about Mr. McDaniel's prior App usage by explaining exactly what that prior usage consisted of. Det. Staab stated "Victim has used this iPhone app on other occasions, where he found his wife's phone in the middle of a field, with an accuracy of five feet." Where Det. Staab mentioned Mr. McDaniel's prior usage of the App followed by an explanation of that exact prior usage, Plaintiff's argument of a falsity is meritless. Nor is there any evidence that the addition of the letter "s" at the end of the word was anything other than a typographical error as opposed to a purposeful or reckless falsehood. Moreover, even if the Affidavit were revised to remove the "s" from occasions, it would have no material affect on probable cause.

The final statement Plaintiff alleges was false is Det. Staab's statement "A photo of the app shows a red dot, signifying the phone being inside the house." Plaintiff argues this statement was false because she presented evidence at trial from a technology witness who testified the dot on

the App shows the center of the area where the phone could be located and does not mean the phone was necessarily where the dot was placed. Assuming for the sake of argument the testimony of Plaintiff's witness was correct, the statement is still not one that must be excised because it was not knowingly false when made. In fact, Plaintiff went to great lengths to point out Det. Staab was inexperienced using this App. Where he was unfamiliar with the blue circle depicted on the screenshot, it cannot be said he made that statement knowing it to be false. Similarly, there is no evidence he "entertained serious doubt as to the truth of that statement" or "acted with a high degree of awareness of its probable falsity." Again, where he was unfamiliar with the App, and instead relied upon what Mr. McDaniel told him about the information in the App, it cannot be said he had doubts, much less serious doubts, as to what the red dot actually signified. Because there is no evidence Det. Staab's statement about what the red dot signified was made intentionally falsely, or with serious doubts about its truthfulness, this statement can remain in the Affidavit.

If Plaintiff argues Det. Staab's statement should be stricken because he testified he had concerns about probable cause when drafting the Affidavit, such testimony would be taken out of context. He testified his concern was whether the pinging had become stale, NOT that he had any concerns about what the red dot signified. Importantly, the entire crux of the statement is what the "red dot" signifies. Thus, reference to questions or doubts about staleness are entirely irrelevant to the question of what the red dot signifies. The record is devoid of any evidence Det. Staab knew or believed the red dot signified anything other than what he stated in the Affidavit. As such, none of the alleged false statements are actually false, nor were any made knowingly falsely or with reckless disregard for the truth. None of the alleged false statement must be stricken from the Affidavit.

Furthermore, there is no evidence at all that Sgt. Buschy placed any of the statements into the Affidavit, and certainly no evidence he knew any of the above statements were false or recklessly disregarded the truth when he approved the Affidavit. As such, there are no statements in the Affidavit which must be stricken for alleged falsity.

C. Statements Allegedly Omitted

Plaintiff alleges the Affidavit was defective because both Det. Staab and Sgt. Buschy failed to state in it that they didn't believe there was probable cause at the time Det. Staab drafted it. This fact is immaterial and must not be added into the Affidavit. Both testified the only concern they had about whether probable cause existed was whether or not the pinging information might be stale since the last ping had occurred the day before. Det. Staab testified he was instructed by Sgt. Buschy to contact DA Beck to discuss the matter. When he did, DA Beck assured him there was not a staleness problem. Sgt. Buschy thereafter spoke with DA Beck, and she assured him too there was probable cause. They also testified that after completing those calls they believed the Affidavit was supported by probable cause when it was submitted to the court for approval. Thus, whether they had questions or doubts before they spoke with the district attorney is entirely irrelevant. Neither of those statements was required to be inserted into the Affidavit.

The third alleged omission is that both believed the district attorney would tell them there would not be probable cause for the warrant, again due to the staleness concern. Just as with the above alleged omissions, this omission is entirely immaterial. What they thought the district attorney might tell them is meaningless. What matters is what she actually told them. She told them the evidence was not stale, and the Affidavit established probable cause. There is no requirement that an officer detail all of their thoughts, questions or concerns as they developed

during an investigation. What matters is their belief when they submitted the final affidavit. Here, both testified they believed the final product established probable cause. Therefore, this statement was not improperly omitted from the Affidavit.

The fourth statement that Plaintiff alleges was wrongfully omitted is the fact the phone had pinged at other places in Denver the day the truck was stolen, prior to arriving at Plaintiff's home. Again, such a statement, while perhaps providing additional factual background, would have been meaningless to the question of whether or not there was probable cause to search Plaintiff's home once the phone arrived at her home. If anything, mentioning the fact that the phone had previously pinged at various location in east Denver, or even within a few blocks of Plaintiff's home prior to pinging at her home, would have only reinforced probable cause existed for this search because it would help establish that the stolen phone worked its way through east Denver to arrive at Plaintiff's home. In any event, it was not material to the question of probable cause to search Plaintiff's home. As such, it would not need to be inserted into the Affidavit now.

The fifth and sixth statements are statements that neither Sgt. Buschy nor Det. Staab had prior experience using this App. Statements about their personal experience with the App were unnecessary as the Affidavit explicitly states the user of the App here, Mr. McDaniel, did have experience using that App, and his prior experience is the App was reliable and accurate, leading to his wife's lost phone. Indeed, when they discussed the matter with the district attorney, she instructed them to speak with Mr. McDaniel about his past experience with the App, which they did, and which Det. Staab then inserted into the Affidavit. Therefore, it cannot be seriously argued that either were attempting to purposefully mislead the approving court. These statements were not required to be inserted into the Affidavit, and even if they were, would not alter the fact it was

supported by probable cause.

Next Plaintiff argues Det. Staab omitted that the stolen truck was not observed at the Plaintiff's home. Again, such a statement was not required. Det. Staab included photographs of Plaintiff's home in the Affidavit, so the reader could easily see there was no stolen truck seen in the photos. Further, he expressly stated in the Affidavit that Mr. McDaniel drove by the home and did not observe the truck. At no point did Det. Staab ever state the truck had been seen at the home. Thus, adding in a second sentence that he did not observe the truck at the home would, at best, be duplicative. The statement urged by Plaintiff, then, would have been surplusage and certainly does not negate probable cause.

Next, Plaintiff contends Det. Staab should have included in the Affidavit that Plaintiff was not considered a suspect in the theft, and DPD surveillance officers did not observe any "suspicious" activity outside the home. Both facts do nothing whatsoever to address whether or not the stolen property was believed to be located at the home. A warrant to search for evidence is not invalid simply because the owner of the place to be searched is not reasonably suspected of criminal involvement. *Zurcher v. Stanford Daily*, 436 U.S. 547, 559 (1978) ("[I]t is untenable to conclude that property may not be searched unless its occupant is reasonably suspected of crime and is subject to arrest. And if those considered free of criminal involvement may nevertheless be searched or inspected under civil statutes, it is difficult to understand why the Fourth Amendment would prevent entry onto their property to recover evidence of a crime not committed by them but by others."). The critical element is not that the property owner is suspected of a crime but that there is reasonable cause to believe the things to be searched for and seized are located on the property to which entry is sought. *Id.* Thus, in the present case, omitting a statement that Plaintiff

was not suspected of committing the theft, or that there was no suspicious activity observed at the time of surveillance, would be completely irrelevant to the determination of probable cause under the Affidavit.

The final alleged omission was Det. Staab's failure to also include in the Affidavit the fact that Mr. McDaniel reported to Det. Staab that later in the morning after the truck had been stolen, someone tried to use his wife's debit card online. This statement is not relevant, much less material. The fact that someone tried to use Mr. McDaniel's wife's debit card online does not say a single thing about whether or not there may be stolen goods located at Plaintiff's home. A person can access the internet from virtually any location by using a computer or even a cellphone. It is entirely plausible, if not likely, that the person who tried to use Mr. McDaniel's wife's debit card tried to do so from their cellphone while still driving around in the stolen truck, and prior to reaching Plaintiff's home. Indeed, Mr. McDaniel never reported to Det. Staab or Sgt. Buschy that the credit card attempt had occurred after the phone came to a rest at Plaintiff's address. As such, adding a statement into the Affidavit about that prior activity would have been completely meaningless to the Affidavit. Adding that statement would not have made it more or less likely that the stolen property was at Plaintiff's home. Therefore, this statement too was not required to be added to Affidavit to determine probable cause.

As can be seen, none of the alleged false statements is false or material, and none of the alleged omitted statements are material or require being inserted into the Affidavit. Because the Affidavit as written requires no revisions, and since it was supported by probable cause, Plaintiff's claim of an unlawful search must fail, as a matter of law. Plaintiff's insistence that Defendants were legally obligated to independently research the parameters of the Find My iPhone app is

erroneous. The Colorado Supreme Court in *People v. Pacheco*, 175 P.3d 91, 94 (Colo.2006), expressly noted that probable cause must be determined from the four corners of the Affidavit. Here, the reliability of the app in question was derived from questioning the user of the App, Mr. McDaniel, about his prior use of the App and its accuracy on that prior occasion. There is nothing in the law which required either Defendant to become experts on the use of the iPhone App. Rather they consulted with Attorney Beck who has substantial experience with the Find My iPhone App. She also instructed them to obtain further evidence concerning the accuracy of the App through conversations with Mr. McDaniel, who had actually used the App previously, which they did.

In determining whether probable cause exists, the inquiry is not governed by rigid legal rules. *Id.* Judges must make a “practical, commonsense decision whether a fair probability exists that a search of a particular place will reveal contraband or evidence of a crime. *Id.* Importantly, “[t]he officer’s belief does not need to be certain or more likely true than false.” *Rife v. Oklahoma Dep’t of Pub. Safety*, 854 F.3d 637, 645 (10th Cir. 2017). Rather, the guidepost for probable cause is “reasonableness, not mathematical probability.” *People v. McCoy*, 870 P.2d 1231, 1235 (Colo. 1994).

Defendants did their due diligence by consulting with the District Attorney’s Office when they had questions about the potential staleness of the ping. Attorney Beck assured them she believed they had probable cause. The pinging had been continual at the Plaintiff’s home until it stopped pinging altogether approximately 17 hours before Defendant Staab began his investigation. The iPhone had pinged numerous times at Plaintiff’s house, over the span of hours, making it highly likely the stolen cellphone remained at that same location. Importantly, the cellphone never pinged at a different location after pinging at the Plaintiff’s home. This evidence

was sufficient to create a reasonable belief that the iPhone was still at Plaintiff's address when the Warrant was obtained just a few hours later.

D. Reliance on Cellphone Location Apps

Courts have routinely found it reasonable for law enforcement officials to utilize "Find My iPhone," in attempting to locate stolen cellphones and related property. *See e.g. People v. Green*, 146 N.Y.S.3d 360, 361 (N.Y. App. 2021) ("[L]aw enforcement was able to track the location of the stolen cell phone with the "Find my iPhone" application. Ultimately, based on real-time location data received from the application, law enforcement stopped a vehicle with four occupants – [the defendants]– and discovered the victim's wallet and cell phone inside."); *State In Int. of J.A.*, No. A-1624-14T2, 2016 WL 763923, at *1 (N.J. Super. Ct. App. Div. Feb. 29, 2016) ("Officer Serrano assisted the victim in activating the phone's "Find my iPhone" feature, an application which tracks the location of a stolen or misplaced Apple device through the use of GPS technology... The application indicated the victim's phone was located at a house on Shelbourne Lane, a few blocks away from the bus stop. Officer Serrano called for assistance and proceeded to the address."); *Commonwealth v. Gil*, No. 566–EDA–2014, 2015 WL 7575708, *1 (Pa. Super. Feb. 10, 2015) ("After the victim reported the robbery, the police tracked the iPhone, through a 'Find My iPhone' mobile application, to a house on Washington Street. The police obtained a warrant to search the premises..."); *People v. Easton*, No. H041704, 2017 WL 393263, *2 (Cal. App. Jan. 30, 2017) ("Using the Find My iPhone application, police recovered [the victim's] cell phone from a recycling bin in front of a residence in Santa Clara within a few blocks of defendant's residence."); *People v. Foy*, 199 Cal.Rptr.3d 208, 212 (Cal. App. 2016) (Police suggested the victim use Find My iPhone application to locate his stolen phone then tracked it to a specific

address);

In *U.S. v. Rivera*, 234 F.Supp.3d. 346 (D.P.R. 2017), two men were robbed, and the perpetrators took their vehicles, cellphones, and an iPad. The police tracked one of victim's cellphone using the Find My iPhone app and found the victims' stolen vehicles but did not find the cellphone. The police later tracked the stolen iPad to the defendant's residence and obtained a search warrant to search the premises. *Id.* The defendant moved to suppress the evidence seized pursuant to the warrant on the ground that the affidavit lacked probable cause to search his home. *Id.* at 350 The Court rejected the defendant's claims finding there was a substantial basis for concluding that probable cause existed to search the defendant's home based on the app. *Id.* at 351.

In *U.S. v. Thorne*, No. 4:18-CR-00029-FL, 2019 WL 7596303, at *1 (E.D.N.C. Aug. 23, 2019), the police used the "Find My iPhone" App to track a stolen iPhone to the defendant's address. The defendant argued that the police did not have probable cause to search his home based on using the app. The Court disagreed, stating:

The officers who testified at the evidentiary hearing either had experience using the Find My iPhone application in police investigations or knew of other officers doing so. They had no reason to question the application's accuracy. While [the officer] had not gotten a search warrant based on a Find My iPhone result before, he had heard of other officers doing so and believed that the application would have given officers probable cause to search the location where the missing phone was "pinging." And at least one court reviewing a search warrant based mainly on a Find My iPhone result found that the application was accurate enough to establish probable cause. *United States v. Rivera*, 234 F. Supp. 3d 346, 352 (D.P.R. 2017) (finding that a search warrant based mostly on the Find My iPhone application was supported by probable cause in part because the application uses GPS technology, the accuracy of which courts have approved previously).

Id. at * 6. The Court further found that the defendant's anecdotal evidence that tended to cast doubt on the Find My iPhone application's accuracy was not enough to establish that it was unreasonable for the officers to rely on the app to find the missing phone. *Id.* at *10.

In the present case, it was entirely reasonable for the Defendants to rely on the results of the Find My iPhone App used by Mr. McDaniel to seek a search warrant for Plaintiff's home. Courts have routinely found that the Find My iPhone App produces sufficiently accurate information to permit the issuance of warrants based upon its results. Here, the Defendants reasonably relied upon the location results provided by Mr. McDaniel, and the Affidavit and Warrant issued thereon were supported by probable cause. As such, Plaintiff's claims must be dismissed, as a matter of law.

IV. CONCLUSION

The undisputed facts demonstrate that the Affidavit established probable cause for the search of Plaintiff's house. Therefore, Plaintiff's claims should be dismissed as a matter of law.

Dated this 28th day of July 2026.

Respectfully submitted by,

s/David Murphy
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Attorney for Defendant Gregory Buschy

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July 2026, the foregoing DEFENDANT GREGORY BUSCHY'S MOTION FOR SUMMARY JUDGMENT was filed with the Clerk of the Court via the CCE system which will send a notification of such filing to the following:

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