

DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO Denver City & County Building 1437 Bannock St., Room 256 Denver, CO 80202	▲ COURT USE ONLY ▲
Plaintiff: RUBY JOHNSON, v. Defendants: 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. William T. O’Connell, III, #34127 Saugat K. Thapa, #51256 Thompson, Coe, Cousins & Irons, LLP 1700 Broadway, Suite 900 Denver, CO 80290 Telephone: (303) 830-1212 woconnell@thompsoncoe.com sthapa@thompsoncoe.com <i>Attorneys for Defendant Gary Staab</i>	Case No: 2022CV33434 Div.: 269
DEFENDANT GARY STAAB’S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	

Defendant Gary Staab, by and through undersigned counsel, hereby submits this Reply to Plaintiff’s Combined Response in Opposition to Defendants’ Renewed Motions for Summary Judgment.

INTRODUCTION

Plaintiff’s Response is replete with distortions of Staab’s arguments, mischaracterizations of Staab’s deposition and trial testimony and repetitive and unpersuasive assertions. As described in Staab’s Motion for Summary Judgment, Staab neither included any false statements in nor omitted any material facts from the Affidavit and there is absolutely no evidence that he acted with

the requisite state of mind in any event. Notwithstanding Plaintiff's haphazard approach, Plaintiff has failed to identify any issues of material fact sufficient to defeat Staab's entitlement to summary judgment.

REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT STAAB'S STATEMENT OF UNDISPUTED FACTS ("SUMF")

4. Plaintiff's response is improper to the extent it addresses issues unrelated to the facts set forth in SUMF ¶ 4. With respect to that portion of Plaintiff's response addressing the facts set forth in ¶ 4, Plaintiff's citations do not support her disputing in part the facts in ¶ 4.

5. Staab's reason for recording the conversation with McDaniel is undisputed and does not require a credibility determination. Plaintiff's citation to Staab's trial testimony does not support her disputing in part the facts in SUMF ¶ 5.

6. Plaintiff's citations do not support her disputing in part the facts in SUMF ¶ 6.

7. Plaintiff's citations do not support her disputing in part the facts in SUMF ¶ 7.

8. SUMF ¶ 8 does not contain a reference to "new pings." Accordingly, ¶ 8 is undisputed.

9. Plaintiff's citation does not support her disputing in part the facts in SUMF ¶ 9.

10. Plaintiff's response is improper to the extent it addresses issues unrelated to the facts set forth in SUMF ¶ 10. With respect to that portion of Plaintiff's response addressing the facts set forth in ¶ 10, Plaintiff's citations do not support her disputing in part the facts in ¶ 10. As described in ¶ 10, the screenshot reveals a phone icon, a dot on Plaintiff's residence and the address of 5380 Worchester Street.

11. Plaintiff's citation does not support her disputing in part the facts in SUMF ¶ 11.

12. Beck's failure to specifically recall the conversation with Staab at her deposition is not evidence that the conversation did not occur. Beck testified at deposition that that she routinely interacts with detectives when handling a warrant and that her interaction with Staab was routine. (Plaintiff's Exhibit M, 63:12 – 18).

13. Plaintiff's citation does not support her disputing the facts set forth in SUMF ¶ 13.

14. Plaintiff's response is improper to the extent it addresses issues unrelated to the facts set forth in SUMF ¶ 14. With respect to that portion of Plaintiff's response addressing the facts set forth in ¶ 14, Plaintiff's citations do not support her disputing in part the facts in ¶ 14.

17. Plaintiff's response is improper to the extent it addresses issues unrelated to the facts set forth in SUMF ¶ 17. With respect to that portion of Plaintiff's response addressing the facts set forth in ¶ 17, Plaintiff's citations do not support her disputing the facts in ¶ 17.

18. Plaintiff's response is improper to the extent it addresses issues unrelated to the facts set forth in SUMF ¶ 18.

19. Plaintiff's response is improper to the extent it is argumentative and addresses issues unrelated to the facts set forth in SUMF ¶ 19.

20. Plaintiff's response is improper to the extent it is argumentative.

21. Plaintiff's response is improper to the extent it addresses issues unrelated to the facts set forth in SUMF ¶ 21.

24. Plaintiff's citation does not support her disputing the facts in SUMF ¶ 24.

RESPONSE TO PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS

Plaintiff's Statement of Additional Material Facts, comprising a staggering 66 paragraphs over some 13 pages, is needlessly verbose, filled with irrelevant assertions and citations to evidence which

do not support the purported facts, and with respect to some half dozen purported facts devoid of any citations to evidence in the record. By way of example, the facts in paragraph nos. 4, 5, 9, 12, 13, 14, 15, 16, 60, 61, 66 are entirely immaterial to the issues presented in Staab's Motion for Summary Judgment.¹ The facts in paragraph nos. 11, 25, 30, 37, 38, 59 are lacking citations to any evidence in the record, while the citations in paragraph nos. 22, 23, 31 do not support the stated facts. When the facts in the aforementioned paragraphs are disregarded, it is evident that the facts which are actually germane to Staab's Motion warrant granting summary judgment in his favor.

Staab does not dispute the following paragraphs in Plaintiff's Statement of Additional Material Facts: 1, 2, 6, 7, 8, 10, 42, 46, 49, 53, 55, 57, 58, 63. Staab disputes in part or in full the following paragraphs:

3. Disputed that Plaintiff testified that large guns were pointed at her. (Plaintiff's Exhibit F, 22:7 – 9).

17. Disputed. The screenshot reveals a phone icon, a dot on Plaintiff's residence and the address of 5380 Worchester Street. *See* Staab SUMF ¶ 10. McDaniel informed Staab that his phone "pinged" to a house located at 5380 Worchester Street in Denver. *See* Staab SUMF ¶ 4.

18. Disputed the blue area spanned about six properties. The blue area covers the entirety of Plaintiff's house and the house next door and touches small portions of two other houses.

19. Disputed. The screenshot reveals a phone icon, a dot on Plaintiff's residence and the address of 5380 Worchester Street.

¹ Plaintiff's reliance on Apple Website Pages in paragraph no. 16 is improper because the documents constitute inadmissible hearsay.

20. Disputed that Staab did not know what the screenshot signified. Staab believed at the time the Affidavit was submitted that the screenshot indicated that the phone was inside the house at 5380 Worchester Street. (Plaintiff's Exhibit G, 47: 8 - 17).

21. Disputed that Staab misrepresented the digital evidence. *See* Response to Plaintiff's Statement of Additional Material Facts, ¶ 20.

24. Disputed. McDaniel also advised Staab that he had driven by the house in a rental car on January 3, 2022 and the iPhone pinged at that address. *See* Staab SUMF ¶ 7.

26. Disputed that the Affidavit falsely described the first ping. Staab testified that he was referring to the first ping at Plaintiff's house. (Plaintiff's Exhibit G, 35:17 – 23; 36:8 – 17). The sentence preceding the "first ping" sentence in the Affidavit states: "The victim related that he utilized the find my iPhone app in an attempt to track down his vehicle/belongings, and the phone pinged to a house, 5380 N. Worchester St. Denver, CO 80239."

27. Disputed that DPD records reflected these reported locations. The only documents cited by Plaintiff in support of same are texts and screenshots to/from McDaniel, not DPD records.

28. Disputed that the screenshot displayed a location "in the vicinity of Worchester Street/Victor Way." The screenshot reveals a phone icon, a dot on Plaintiff's residence and the address of 5380 Worchester Street.

29. Disputed that the phone was pinged at 13600 E Maxwell Place at 11:30:45 a.m. The time stamp in the CAD does not equate to the actual time McDaniel's vehicle was near Falcon Park. Rather, the time stamp indicates when dispatch entered it into the CAD. *See* Staab Motion for Summary Judgment, pp. 13 – 14.

32. Disputed that Staab would have encountered evidence of McDaniel's purported misunderstanding of the app. Plaintiff's citations do not support same.

33. Disputed that Staab knew that the assertion that the phone did not move between 11:24 a.m. and 3:55 p.m. was false. There is no evidence that Staab knew any statements in the Affidavit were false and Plaintiff's citations do not support same.

34. Disputed that McDaniel's statement regarding the last ping was misleading and disputed that Staab knew that the statement was allegedly misleading. There is no evidence that Staab knew any statements in the Affidavit were false and Plaintiff's citations do not support same.

35. Disputed. Staab has consistently testified that that McDaniel advised him of this information. This testimony is uncontradicted and this information is conspicuously included in the Affidavit. *See Reply*, p. 9.

36. Staab's use of the plural instead of the singular is at worst a mistaken misstatement which does not invalidate the warrant or require excision. *See Johnson*, 2025 COA 45, ¶ 28 (“[A] warrant may be supported by probable cause even if the supporting affidavit contains negligent or mistaken misstatements.”).

39. Staab cannot reasonably respond to this paragraph because it is unknown what is meant by “first-hand investigation.”

40. Disputed that the absence of the truck left Staab with no reason to believe the truck was at Plaintiff's house. Staab did not testify to same and Plaintiff's attempt to mischaracterize his testimony should be rejected.

41. Disputed that Defendants falsely swore they had reason to believe the truck was there. Plaintiff's citations do not support same.

43. Staab has no knowledge what the reviewing judge or Beck knew or did not know.

44. Disputed that McDaniel's report of an attempted online purchase using his wife's debit card constitutes a "fresh investigative lead." This information is immaterial to the probable cause analysis because it has no bearing on whether the stolen truck was at Plaintiff's residence. *See* Staab Motion for Summary Judgment, p. 17.

45. Disputed. *See* Response to Plaintiff's Statement of Additional Material Facts, ¶ 44.

47. Disputed in part. Plaintiff's citations do not support same.

48. Disputed. Plaintiff's citations do not support same.

50. Disputed. Plaintiff's citations do not support same.

51. Disputed. At the time he prepared the Affidavit, Staab held a good faith belief that the dot and the address of 5380 Worchester St, Denver, CO 80239, showed the exact location of the phone. At the time the search warrant was executed, Staab and Buschy believed there was probable cause for the search at Plaintiff's residence. *See* Staab SUMF ¶ 24, Motion for Summary Judgment, pp. 14 – 15.

52. Disputed that Plaintiff's citations support that Buschy expected Beck to conclude that probable cause was lacking.

53. Disputed. Plaintiff's citations do not support same.

54. Disputed that the Affidavit was misleading. *See* Staab Motion for Summary Judgment and this Reply.

56. Disputed. Plaintiff's citations do not support same.

62. Disputed. Plaintiff's citations do not support same.

64. Disputed that public safety concerns did not call for acting quickly. (Staab 2/27/24 testimony, 302:13 – 24 and 2/28/24 testimony, 22:15 - 17; attached hereto as **Exhibit A**)

65. Disputed that they had “nothing but time.” *See* Response to Plaintiff’s Statement of Additional Material Facts, ¶ 64. Disputed that each of the other properties was just as likely to be the location of the house. *See* Response to Plaintiff’s Statement of Additional Material Facts, ¶ 51. Disputed that Plaintiff’s house was raided.

ARGUMENT

DETECTIVE STAAB IS ENTITLED TO SUMMARY JUDGMENT BECAUSE HE DID NOT INCLUDE ANY FALSE STATEMENTS IN NOR OMITTED ANY MATERIAL FACTS FROM THE AFFIDAVIT AND THERE IS NO EVIDENCE THAT HE ACTED WITH THE REQUISITE STATE OF MIND

The prior jury’s conclusion and verdict and what Staab may have “acknowledged” or “conceded” on appeal are entirely irrelevant to the analysis of Staab’s Motion for Summary Judgment. Equally irrelevant is the testimony from Plaintiff’s “geolocation technologies” expert’s about “the big shaded blue circle.” (Response, p. 25). Contrary to Plaintiff’s assertion that Staab testified “that the phone could have been anywhere in the in the blue-shaded circle,” (Response, p. 25), Staab actually testified that he understood the screenshot to demonstrate a precise location for the phone. (Plaintiff’s Exhibit F, Staab, 243:10 – 12). Similarly unavailing is Plaintiff’s incessant references to not only her “geolocation technologies” expert but her police practices expert. Any opinions offered by these experts do not serve to establish that Staab acted with the requisite state of mind sufficient to prove her unlawful search claim.

Plaintiff argues that the Affidavit “misleadingly indicated that McDaniel ‘reported the first [Find My] ping occurred on 01/03/2021, at 11:24 hours.’” (Motion, p. 26). In response to Staab’s argument that his statement referred to the first ping at Plaintiff’s house, Plaintiff maintains that a jury

could draw the contrary inference given the evidence that McDaniel had reported pings all over Denver prior to 11:24 a.m. Plaintiff's contention is specious because Staab's testimony that he was referring to the first ping at Plaintiff's house is unrefuted. Moreover, the Affidavit itself undeniably supports Staab's testimony. The sentence preceding the "first ping" sentence in the Affidavit states: "The victim related that he utilized the find my iPhone app in an attempt to track down his vehicle/belongings, and the phone pinged to a house, 5380 N. Worchester St. Denver, CO 80239." When the pertinent sentences of the Affidavit are read together, the meaning of the "first ping" is not subject to reasonable dispute.

In an effort to cast doubt on the information conveyed by McDaniel, Plaintiff maintains that the jury could conclude that McDaniel never stated the phone was pinging at the address when he drove by because there is no reference to same in the recorded portion of Staab's call with McDaniel or the GO report and Staab does not know when the drive by and ping occurred. (Motion, p. 26). Plaintiff's argument is unavailing because it rests on little more than rank speculation. There is no evidence to even remotely suggest that McDaniel did not make this statement or the other statements attributed to him in the Affidavit. Indeed, Staab has provided consistent and uncontradicted testimony that McDaniel advised him of this information and it is conspicuously included in the Affidavit.

Plaintiff's effort to spin Staab's trial testimony to fit their theory of the case should be flatly rejected. Contrary to Plaintiff's assertion, Staab did not testify that he had no reason to believe that McDaniel's truck was at Plaintiff's home when he completed the Affidavit. (Motion, p. 26). Similarly ineffectual is Plaintiff's contention that Staab knew the truck was not at Plaintiff's house. (Motion, p. 26). Plaintiff's contention that Staab has acknowledged that the Affidavit contains a falsehood, let alone "two falsehoods," (Motion, p. 34) is patently disingenuous given the evidence in the record. *See* Staab Motion for Summary Judgment, pp. 12 – 15.

Plaintiff argues that there is “evidence that Staab falsely swore McDaniel had reported using Find My on multiple occasions: Stab admitted he had had been told by McDaniel of only one previous use, when he found his wife’s phone in a field.” (Motion, p. 27). In response to Staab’s argument that his use of the plural instead of the singular is at worst a mistaken misstatement, Plaintiff advances a rather bizarre claim that the “structure of the sentence is written for a plural, to inflate McDaniel’s experience beyond what Defendants knew it to be.” (Motion, p. 27). The fact that the word “other” would need to be replaced with the word “another” to create a grammatically correct sentence (See Staab Motion for Summary Judgment, revised affidavit, pp. 17 - 19) does not serve to create a genuine issue of material fact sufficient to defeat Staab’s entitlement to summary judgment. See *Johnson*, 2025 COA 45, ¶ 28 (“[A] warrant may be supported by probable cause even if the supporting affidavit contains negligent or mistaken misstatements.”).

While Plaintiff superficially addresses the purported material omissions from the Affidavit at pages 27 and 28 of her Response, she fails to demonstrate in any respect that any of the omissions render the Affidavit “substantially misleading as to the existence of probable cause.” Staab’s inexperience with the app is immaterial for the reasons described at page 16 of his Motion for Summary Judgment. Information regarding Plaintiff and other standard identifying information is immaterial because it is typically not included in Affidavits given its limited value since friends or family members living in the house may have committed the crime. See Staab Motion for Summary Judgment, p. 17. Failure to observe the truck or suspicious activity near Plaintiff’s residence is immaterial because neither support a reasonable inference that a crime has not been committed. See Staab Motion for Summary Judgment, p. 17. The online use of McDaniel’s wife’s debit card by an unidentified individual the day McDaniel’s truck was stolen is immaterial to the probable cause

analysis because it has no bearing on whether the stolen truck was at Plaintiff's residence. *See* Staab Motion for Summary Judgment, p. 17. Finally, Staab and/or Buschy's subjective beliefs and doubts about probable cause are irrelevant because omission of these facts does not render the Affidavit substantially misleading as to the existence of probable cause. *See* Staab Motion for Summary Judgment, p. 16. It bears repeating that Staab's only concern relative to probable cause was potential staleness, a concern which was alleviated after he spoke to DDA Beck. *See* Staab SUMF ¶ 12.

In support of her argument that Defendants submitted the misleading Affidavit with reckless disregard for the truth, Plaintiff maintains that "Defendants' 'no evidence' position is belied by the prior jury's conclusions their conduct was willful and wanton." (Motion, p. 28). Again, the conclusions reached by the prior jury are entirely irrelevant to the analysis of Staab's Motion for Summary Judgment. Plaintiff also argues that a jury could conclude that "the big blue circle gave obvious reason to doubt the truth of Staab's baseless characterization" that the photo of the app signified the phone being inside the house. (Motion, p. 29). The fundamental flaw with Plaintiff's argument is that in order for the jury to arrive at such a conclusion there must be evidence that Staab harbored reservations about the phone's location based on the so called "big blue circle" or otherwise. Here, there is no such evidence. The contention that Staab's statement(s) in the Affidavit regarding the location of the phone inside the house somehow gave the false impressions that it was based on Staab's independent understanding of the technology (Motion, p. 29) is devoid of evidentiary support and solely a product of counsel's imagination.

Plaintiff attempts to minimize Staab's reliance on McDaniel's statements and Beck's approval of the Affidavit by contending with no elucidation that this constitutes a factual dispute about Staab's

state of mind. (Motion, p. 31). It is entirely unclear how a factual dispute is created in the absence of any competing evidence. Plaintiff also claims that there is no evidence that either McDaniel or Beck advised the Defendants that the screenshot signified the phone being inside Plaintiff's home and that "this definitive, crucial assertion was the addition of an untrained, uneducated, reckless officer." (Motion, p. 31). The crucial fact here is that McDaniel informed Staab that his iPhone pinged to Plaintiff's house, and Plaintiff relies on little more than hyperbole and supposition to counter it.

The record fails to provide any reason to doubt Staab and Buschy's discussion with Beck about the app. (Motion, p. 31). As described in the Reply to Plaintiff's Response to Defendant Staab's Statement of Undisputed Facts at Paragraph 12, Beck's failure to specifically recall the conversation with Staab at her deposition is not evidence that the conversation did not occur, especially given Beck's testimony that that she routinely interacts with detectives when handling a warrant and that her interaction with Staab on the day in question was routine.

Plaintiff's efforts to question Beck's experience with the app and cast her experience as irrelevant are groundless. (Motion, p. 31). It is axiomatic that Beck's experience with the app guided her analysis of the probable cause inquiry. The fact that Beck did not convey her knowledge/experience with the app to Staab is not germane to the analysis. Plaintiff's reliance on *People v. Dailey*, 639 P.2d 1068, 1075 (Colo. 1982) is misplaced because Staab's Affidavit was not defective in the first instance and no efforts to rehabilitate/bolster it are necessary.

In a desperate attempt to undermine Staab's reliance on the information conveyed by McDaniel, Plaintiff argues that McDaniel had no specialized knowledge of app. (Motion, 31). Apparently, Plaintiff is of the belief that a law enforcement officer may not rely on the information conveyed by a victim, if the information in any way involves technology, without first seeking the

aid of outside experts. Plaintiff's implausible proposition is devoid of any citation to relevant authority. Equally specious and unsupported by any authority is the argumentative declaration that a jury is entitled to be skeptical of McDaniel's statements given the nature of the possessions in his stolen truck. (Motion, pp. 31 – 32).

Contrary to Plaintiff's suggestion, the treatment of dog alerts in the probable cause analysis does not provide anything remotely close to a useful analogy to the facts of this case. (Response, p. 36). Notwithstanding Plaintiff's best efforts to equate McDaniel's statements to an informant's tip, McDaniel is obviously not an informant and his statements are not akin to a tip. Accordingly, the analysis of the reliability of an informant's tip or a narcotics dog in the probable cause context has no application here and is little more than a red herring. With respect to Plaintiff's reliance on other inapposite cases, specifically *United States v. Jacobs*, 986 F.2d 1231 (8th Cir. 1993) and *Beard v. City of Northglenn*, 24 F.3d 110 (10th Cir. 1994) cited at page 24 of the Response, Staab adopts and incorporates Buschy's analysis of these cases and arguments related to same in the interests of judicial economy and efficiency.

Plaintiff's characterization of Staab's arguments as an attempt to "bolster probable cause based on things not contained within the affidavit, like Beck's purposed use of the app..." (Motion, p. 38) is fallacious. First, there is no need for Staab to bolster probable cause because none of the challenged statements must be excised from the Affidavit as they are either entirely accurate or at worst innocuous mistakes, and there is no evidence that Staab made any such statements with the requisite state of mind. Moreover, Plaintiff's continued effort to question Beck's experience with the app and characterize her experience as irrelevant is unfounded for the reasons described at page 12.

Despite filing a 40 page Response, Plaintiff completely ignores the Revised Affidavit analyzed at pages 17 through 19 of Staab's Motion for Summary Judgment. Plaintiff's inexplicable oversight is significant because a revised Affidavit with all statements that could liberally be construed as "false" excised and all omissions that could liberally be construed as "material" would unquestionably still establish probable cause.

CONCLUSION

For the reasons set forth above and in the Motion for Summary Judgment, Defendant Gary Staab respectfully requests that the Court grant summary judgment in his favor on Plaintiff's unlawful search claim and dismiss Plaintiff's Third Amended Complaint against him with prejudice.

Dated this 8th day of September 2026.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, LLP

s/ William T. O'Connell, III

William T. O'Connell, III, #34127

Saugat K. Thapa, #51256

Attorneys for Defendant Gary Staab

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September 2026, a true and correct copy of the foregoing **DEFENDANT GARY STAAB'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was electronically filed and served through the Colorado Courts E-Filing System pursuant to C.R.C.P. 121, §1-26(3) upon all counsel of record.

s/ Carolyn P. Boulette

Carolyn P. Boulette, Legal Assistant

*[Original Signature on File at the Office of Thompson,
Coe, Cousins & Irons, L.L.P.]*