

<p>DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO Denver City & County Building 1437 Bannock St., Room 230 Denver, CO 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: RUBY JOHNSON</p> <p>v.</p> <p>Defendant: GARY STAAB, an officer of the Denver Police Department, in his individual capacity.</p>	
<p><i>Attorneys for Plaintiff:</i></p> <p>Paul G. Karlsgodt, No. 29004 Colby M. Everett, No. 56167 BAKER & HOSTETLER LLP 1801 California Street, Suite 4400 Denver, CO 80202-2662 pkarlsgodt@bakerlaw.com ceverett@bakerlaw.com P: 303.861.0600 F: 303.861.7805 <i>In cooperation with the ACLU Foundation of Colorado</i></p> <p>Ann M. Roan, No. 18963 LAW OFFICES OF ANN M. ROAN, LLC 4450 Arapahoe Avenue, Suite 100 Boulder, CO 80303 303-448-8818 ann@annroanlaw.com <i>In cooperation with the ACLU Foundation of Colorado</i></p> <p>Mark Silverstein, No. 26979 Anna I. Kurtz, No. 51525 American Civil Liberties Union Foundation of Colorado 303 E. 17th Ave., Suite 350 Denver, Colorado 80203 msilverstein@aclu-co.org akurtz@aclu-co.org P: (720) 402-3114 F: (303) 777-1773</p>	
<p>COMPLAINT AND JURY DEMAND</p>	

Ruby Johnson (“Plaintiff” or “Ms. Johnson”), by undersigned counsel, hereby files this Complaint for Damages and Jury Demand against Defendant Gary Staab (“Defendant Staab”), an officer of the Denver Police Department (“DPD”), in his individual capacity, and alleges as follows:

INTRODUCTION

1. Ms. Johnson is a 77-year-old retired United States Postal Service worker and grandmother who lives alone in Denver’s Montbello neighborhood. On January 4, 2022, Ms. Johnson’s quiet world was shaken when an armored DPD SWAT team showed up at her home of 40 years, searching for stolen goods and evidence of a truck theft. The hastily undertaken and outsized operation was based on a manifestly deficient search warrant and turned up nothing. Officers combed through Ms. Johnson’s home for hours and found no evidence of anything even remotely connected to any criminal activity. The illegal search succeeded only in leaving the innocent Ms. Johnson traumatized.

2. Ms. Johnson brings this action against Defendant Staab, the detective who obtained the warrant and led the ensuing illegal search, to vindicate inalienable rights guaranteed to her under the Colorado Constitution.

3. The warrant authorizing the illegal search of Ms. Johnson’s home issued on Defendant Staab’s hastily prepared, bare-bones, misleading affidavit. The sole basis he identified for connecting the crime to Ms. Johnson’s address was the truck theft victim’s use of Apple’s “Find My” app to try to track an old iPhone that was in the stolen truck. But contrary to Defendant Staab’s representations to the reviewing judge, use of the app in fact made clear that the iPhone’s location could not be accurately identified, and there was zero basis to single out Ms. Johnson’s home.

4. On the authority of the illegally issued warrant, DPD showed up at Ms. Johnson’s home with an overwhelming, intimidating show of unnecessary force. Over a bullhorn, the amplified command of the SWAT team loudly ordered anyone inside to exit with their hands up. Ms. Johnson went to her front door, disoriented and terrified, wearing only her bathrobe and bonnet. She opened it to the sight of an armored military personnel carrier parked on her front lawn, DPD-marked vehicles along her street, and numerous men in full military technical gear carrying tactical rifles, a K9 German Shepherd in tow. Ms. Johnson was placed in the back of a marked police vehicle and ordered to wait there, guarded by an armed and uniformed officer.

5. The fruitless search ended hours later, but its impacts have been enduring. The baseless invasion of Ms. Johnson’s home and privacy has caused Ms. Johnson irreparable harm, including, but not limited to, unreimbursed property damage and severe emotional distress.

6. Pursuant to C.R.S. § 13-21-131, Ms. Johnson brings this civil action against Defendant Staab for his violation of her state constitutional right to be free of unreasonable searches and seizures.

PARTIES, JURISDICTION, AND VENUE

7. Plaintiff Ruby Johnson is a 77-year-old retired United States Postal Service worker and grandmother. She is five feet tall. She lives by herself at [REDACTED] Street, in Denver, Colorado, the house where she raised her three children and has called home for forty years.

8. At all relevant times, Defendant Gary Staab was a detective with DPD.

9. This Court has jurisdiction over this matter pursuant to article VI, section 9(1) of the Colorado Constitution.

10. Pursuant to C.R.P.C. 98(c), venue is proper in this county because Ms. Johnson resides in Denver and Defendant Staab's violations of Ms. Johnson's rights occurred in Denver.

FACTUAL ALLEGATIONS

I. A Truck with Guns, Money, and Electronics Is Reportedly Stolen on January 3, 2022.

11. At approximately 6:45 am on January 3, 2022, the security camera at the Denver Hyatt captured a white truck, with Texas license plate LW0548, break the arm of the Hyatt's garage gate and speed out of the garage.

12. The Hyatt contacted the truck's owner, Jeremy McDaniel, who was a guest at the hotel. He stated the truck had been stolen.

13. At approximately 11:00 a.m. on January 3, 2022, DPD officer Chris Randall responded to the Hyatt and took McDaniel's statement.

14. McDaniel told Officer Randall that, when it was taken, the truck contained four semi-automatic handguns, a tactical military-style rifle, a revolver, two drones, \$4,000.00 in cash, and an old iPhone 11.

15. DPD conducted no follow-up investigation on January 3, 2022.

II. Defendant Staab Is Assigned to Investigate on January 4, 2022.

16. On January 4, 2022, the theft of McDaniel's truck was assigned to Defendant Staab for follow-up investigation.

17. That morning, around 8:45 am, Defendant Staab interviewed McDaniel by phone.

18. McDaniel told Defendant Staab that he had used the Apple "Find My" app to try to find his stolen belongings.

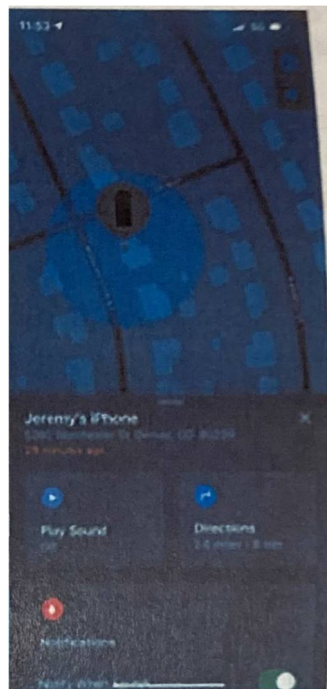
19. After talking with McDaniel, Defendant Staab quickly drafted an affidavit seeking a warrant to search Ms. Johnson's home for the stolen items.¹

III. Defendant Staab Submits a Bare-Bones and Misleading Affidavit.

20. Defendant Staab's affidavit recounted McDaniel's report that he had used the Apple "Find My" app to try to track his iPhone and that it had "pinged" to the [REDACTED] Street address. According to the affidavit, McDaniel said his iPhone first pinged to the address "on 01/03/2021 [sic], at 1124 hours," pinged again there "on 01/03/2021 [sic], at 1555 hours," but then "ha[d] not pinged at the location since."²

21. The affidavit further stated that McDaniel reported having rented a car and driven by [REDACTED] Street when his iPhone was pinging there but that McDaniel did not see his truck. The affidavit reported McDaniel's speculation that the truck could have been in the house's attached garage.

22. The affidavit also included an image that appeared to be a reproduction of a screenshot displaying the earlier of the two pings referenced by McDaniel. That image is reproduced here:



¹ Without explaining why, Staab did not include the allegedly stolen \$4,000 cash in his request for a search warrant.

² Defendant Staab's affidavit dated the pings to 2021, a year preceding the crime under investigation. Taking his report at face value, of course such dated "Find My" pings could not be said to provide any reason to suspect a device's location a year later. Presuming the references to the wrong year were typographical errors, they indicate at the very least the absence of care with which this affidavit was drafted, reviewed, and approved.

23. The Colorado Constitution requires that search warrants be based on probable cause that is set forth in a written affidavit. The affidavit must truthfully present objective facts sufficient for a judge to make an independent determination that there is probable cause to search someone's home for particularly described items. The determination of probable cause must be based solely on the facts appearing within the four corners of the affidavit.

24. In the affidavit Defendant Staab submitted, the sole purported connection between the theft of the truck and [REDACTED] Street was McDaniel's use of the "Find My" app. The affidavit presented absolutely no independent basis to corroborate a nexus to Ms. Johnson's home.

25. The affidavit did not state that McDaniel ever personally observed his stolen truck or any of the items that were inside it at [REDACTED] Street.

26. The affidavit failed to explain how the "Find My" app works, identify what technology it uses to produce its results, or establish that the app was working correctly when McDaniel used it. Defendant Staab reported no personal or professional experience with the app or its reliability. The affidavit failed to provide facts that would allow the judge to determine the credibility and reliability of the "Find My" app or to weigh the significance of McDaniel's reported use of it.

27. Instead, Defendant Staab provided an unsupported and wholly conclusory statement that the screenshot image "signif[ied] the phone being inside the house, [REDACTED] [REDACTED] St. Denver, CO [REDACTED]."

28. Defendant Staab's assertion about the meaning or significance of the screenshot was not only conclusory, it was false. The screenshot in Staab's affidavit did not signify that the iPhone was inside Ms. Johnson's house.

29. On the contrary, readily available user guidance that Apple posts on the internet about the "Find My" app makes it clear that this screenshot eliminated any rational possibility that the pings justified a search of Ms. Johnson's home. Defendant Staab's affidavit omitted this readily available material information, and these material omissions made his affidavit substantially misleading to the reviewing judge.

30. Apple's "Find My" app uses information from cellular, Wi-Fi-, and GPS networks and Bluetooth to determine the *approximate location* of people and their devices. It is not intended as a law enforcement tool.

31. A number of factors adversely impact the accuracy and precision of the "Find My" app.

32. GPS accuracy, for example, depends on the number of visible GPS satellites. Walls, vehicle roofs, tall buildings, mountains, and other obstructions such as trees, buildings, and bad weather can block line of sight to GPS satellites.

33. When the program cannot rely on GPS, it triangulates location using signals from various mobile network transmission towers, or estimates it based on the geographic location of a single transmission tower of a cellular network.

34. The program relies on data collection services provided by third parties that are subject to change and are not available in all geographic areas, resulting in maps, directions, or location-based information that might be unavailable, inaccurate, or incomplete.

35. Crucially, if a device's location cannot be determined precisely, the user will see a blue circle around the device's marker on the map. The size of the blue circle shows how precisely the device's location can be determined. For example, the larger the circle; the greater the inaccuracy.

36. Below is the screenshot in Defendant Staab's affidavit, with the circumference of the blue circle overlaid for clarity:



37. This blue circle covered an area spanning at least six different properties and parts of four different blocks in the vicinity of [REDACTED] Street.

38. The screenshot offered no basis to believe McDaniel's iPhone was likely to be inside Ms. Johnson's house, rather than on any of several neighbors' properties, or discarded on a nearby street by a passing driver.

39. Defendant Staab knew or should have known that the screenshot did not signify that McDaniel's iPhone was inside Ms. Johnson's house.

40. Defendant Staab presented his false characterization of the screenshot's meaning as an objective fact and omitted the particular facts and circumstances that contradicted it. These

omissions and his mischaracterization prevented the reviewing judge from independently evaluating the existence of probable cause.

IV. The Search Warrant Issues Without Probable Cause.

41. After Defendant Staab drafted his hastily prepared, bare-bones, materially misleading affidavit, an unknown DPD supervisor approved it.

42. Section 107.01(9)(a) of the Denver Police Department Operation Manual requires a supervisor reviewing a search warrant affidavit to “print their name, badge, number, the date, and sign their name at the end of the affidavit and search warrant to indicate review.” Defendant Staab’s affidavit includes no supervisor’s printed name, date, or badge number, only an illegible signature.

43. At 11:42 a.m., Denver deputy district attorney Ashley Beck electronically approved the affidavit.

44. A little more than an hour later, Denver County Court Judge Beth A. Faragher signed the warrant authorizing the search of Ms. Johnson’s home.

45. The entire “investigation” and “review” that resulted in a warrant to search Ms. Johnson’s home lasted little more than four hours.

V. DPD Executes an Illegal Search of Ms. Johnson’s Home.

46. Less than an hour after the court authorized the search warrant, DPD SWAT officers and other DPD officers swarmed Ms. Johnson’s home.

47. At all relevant times and on information and belief, DPD SWAT and other DPD officers were acting at Defendant Staab’s direction.

48. DPD SWAT pulled their armored military personnel carrier onto Ms. Johnson’s lawn, blasted an airhorn, and used a loudspeaker to demand that anyone inside exit the home with their hands up.

49. When Ms. Johnson heard the bullhorn, she was sitting alone in her living room watching television. Because she had just taken a shower, Ms. Johnson was wearing her bathrobe, a bonnet, and house slippers.

50. Ms. Johnson immediately opened her door to find a large group of DPD officers in military gear carrying tactical rifles, the armored military personnel carrier parked in front of her house and flanked by many other DPD marked vehicles, and a German shepherd K9 dog.



51. Despite its resemblance to a full-on military attack, in an interview with 9News, a DPD spokesperson later referred to this deployment at Ms. Johnson’s home as the “lowest threshold of aggression.”³



³ Zack Newman & Angeline McCall, *77-Year-Old Woman Traumatized After SWAT Raided her Home, No Evidence Found*, 9NEWS, <https://www.9news.com/article/news/local/denver-police-swat-raid-of-grandmothers-montbello-home-angers-neighbors/73-2d6fc6f7-a57e-4d47-b7ed-b75c4163ca19> (Nov. 2, 2022).

52. Ms. Johnson was very frightened and confused but immediately cooperated with the overwhelming show of police force.

53. DPD officers ordered Ms. Johnson to sit on the rear doorframe of the armored military personnel carrier and asked her whether there were any other people in the home and whether there were any stolen guns in the house.



54. Ms. Johnson informed the officers that she lived by herself, that she was home alone, and that there was nothing stolen in her house. She told the officers that because she lives alone, she always keeps her doors locked as a safety measure.

55. During the questioning, DPD officers in full SWAT gear, many carrying tactical rifles, surrounded Ms. Johnson. All of the officers were wearing handguns in holsters strapped to their upper legs.

56. After questioning her, officers placed her in the back of one of the many marked vehicles surrounding her home, which then transported Ms. Johnson down the street, out of sight of her home.



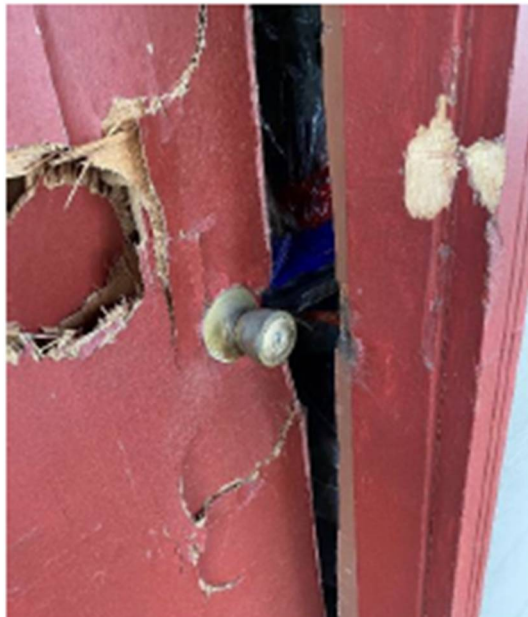
57. DPD confined Ms. Johnson in the back of the marked police car for hours while they searched her home. An armed, uniformed officer stood outside the vehicle. DPD offered her no explanation of why her home was stormed or why she needed to be detained.

58. DPD confined Ms. Johnson away from her home during the time of day when she takes her daily medications. No DPD officer asked Ms. Johnson whether she needed access to a bathroom, medicine, food, or even a glass of water.

59. During the search, DPD questioned Ms. Johnson about how to enter her garage.

60. Ms. Johnson told the DPD officers where her garage door opener was and gave instructions on how to open the garage's front door.

61. DPD disregarded Ms. Johnson's instructions and used a battering ram to destroy the back garage door and door frame.



62. DPD also damaged the interior of Ms. Johnson's home.

63. DPD stood on the top rail of one of Ms. Johnson's newly purchased dining room chairs and used the handle of her kitchen broom to break apart the unsecured ceiling panel to search her attic.



64. DPD broke the head off one of Ms. Johnson's prized collectable doll figurines that Ms. Johnson had cherished for nearly three decades as a gift from her youngest son.

65. DPD rifled through Ms. Johnson's belongings throughout the house during the search. The home was left in disarray.

66. DPD's unlawful search yielded neither evidence of nor any connection to any crime or criminal activity.

67. DPD's unlawful search yielded no fruits or instrumentalities of the crime reported by McDaniel.

68. DPD did not find McDaniel's iPhone.

69. Following the search, Defendant Staab acknowledged to Ms. Johnson's children the harm his DPD officers caused to Ms. Johnson's well-being, home, and personal property. But, Defendant Staab told them DPD would pay nothing to repair the damage from its failed search.

70. Neither Defendant Staab nor anyone else at DPD has apologized to Ms. Johnson for their egregious invasion or the turmoil they left in their wake.

VI. Ms. Johnson Suffers as a Result of Defendant Staab's Illegal Conduct.

71. As a result of Defendant Staab's violation of her right to be free from unreasonable searches and seizures, Ms. Johnson suffered, and continues to suffer, severe physical and emotional distress.

72. Ms. Johnson's privacy, sense of safety, and peace in her home have been shattered since her house became the scene of a militarized criminal investigation.

73. This illegal search has destroyed Ms. Johnson's sense of safety and security in the home that has been her castle for forty years.

74. Ms. Johnson felt violated by DPD's invasion of privacy and overwhelming show of force.

75. After the illegal search, Ms. Johnson could not bear to remain in her house. She spent the following week staying with her daughter, who lives nearby.

76. Ms. Johnson tried to return home, but, a week after the illegal search, she continued to feel violated and unsafe there.

77. Because she felt unsafe in her own home, Ms. Johnson then went to stay with her youngest son in Houston, Texas. She stayed there for several months so she would not have to be alone in her home on [REDACTED] Street.

78. While she was staying with them, Ms. Johnson's children noticed her awake at all hours of the night. Ms. Johnson developed tremendous difficulty falling and staying asleep as a result of the illegal search.

79. Ms. Johnson did not return to her home in Montbello for three months.

80. Ms. Johnson experienced intense shame and embarrassment as a result of the spectacle of DPD's militarized illegal search. After a lifetime of being a law-abiding, hardworking, church-going member of her community, she nurses anxiety about what her neighbors thought of her that day and think of her now.

81. Ms. Johnson has suffered and continues to suffer severe emotional distress and anxiety as a result of the trauma associated with the unlawful search.

82. To this day, Ms. Johnson experiences anxiety living alone in her home and is afraid to answer the door.

83. Ms. Johnson struggles with intrusive thoughts about that fateful day. She ruminates about how different circumstances would have altered the course of events. She experiences special distress imagining what would have happened if she had still been in the shower when the SWAT team arrived at her doorstep.

84. Ms. Johnson has difficulty speaking about the events that unfolded and cannot do so without crying.

85. As a result of emotional wounds from January 4, 2022 that will not heal, Ms. Johnson is considering moving out of her home. The memories of her four decades there have been overtaken by the illegal police search that has redefined what her home means to her. It is no longer a refuge but a reminder of her vulnerability, even when her doors are locked.

CLAIM FOR RELIEF
(Civil Action for Deprivation of Rights, C.R.S. § 13-21-131)
(Unlawful Search in Violation of Colo. Const. art. II, § 7)

86. Ms. Johnson incorporates all other allegations in this Complaint as if fully alleged herein.

87. Article II, section 7 of the Colorado Constitution forbids unreasonable searches and seizures.

88. Defendant Staab was, at all relevant times, a DPD officer, as defined in section C.R.S. § 24-31-901(3).

89. Defendant Staab carried out a recklessly deficient investigation of the theft of McDaniel's truck.

90. At the time he decided to seek a warrant to search Ms. Johnson's home, Defendant Staab lacked probable cause that evidence of crime could be found there.

91. Nevertheless, in support of his request for a search warrant, Defendant Staab prepared a bare-bones affidavit that was wholly devoid of probable cause.

92. The affidavit included knowingly or recklessly false statements of material fact.

93. Defendant Staab, either intentionally or with reckless disregard, omitted material, adverse facts that made the affidavit substantially misleading.

94. If the false statements of material facts were deleted from Staab's affidavit, and if the omitted material facts had been included in Staab's affidavit, it would have been even more clear that the affidavit failed to provide probable cause.

95. After causing a groundless search warrant to issue, Defendant Staab directed the execution of the warrant at Ms. Johnson's home.

96. The execution of the warrant was carried out in an unreasonable manner, in violation of Ms. Johnson's rights.

97. The unreasonable execution included making an overwhelming and intimidating show of quasi-military force, destroying Ms. Johnson's property, leaving Ms. Johnson's clothes and household goods in disarray, as well as removing Ms. Johnson from her home in her bathrobe and confining her for hours in a police vehicle while the unlawful search was carried out.

98. Through Defendant Staab's intentional and/or reckless acts and/or omissions, including his submission of an unconstitutionally defective application for search warrant, and his subsequent unreasonable execution of that unconstitutional warrant, he caused Ms. Johnson to endure an unreasonable search and seizure, unlawful police confinement, and severe physical and emotional distress.

WHEREFORE, Ms. Johnson is entitled to an award of compensatory damages; an award of reasonable attorneys' fees and costs, pre- and post-judgment interest, and such additional relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Ms. Johnson prays for the following relief against Defendant Staab:

- a. An award of compensatory damages;
- b. An award of reasonable attorneys' fees and costs pursuant to C.R.S. § 13-21-131(3);
- c. An award of pre- and post-judgment interest;
- d. Such other relief as the Court deems just and proper.

JURY DEMAND

Ms. Johnson demands a trial by jury on all issues so triable.

Dated: December 1, 2022

Respectfully submitted,

BAKER & HOSTETLER LLP
*Duly signed original on file at the offices of
Baker & Hostetler LLP*

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