

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02802-REB-MEH

JEREMY C. MYERS,

Plaintiff,

v.

BRIAN KOOPMAN, Detective in the Loveland, Colorado Police department, in his individual capacity;

Defendant.

**PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO
COMPEL DISCOVERY (DOCKET #206, FILED 05/16/2012)**

Plaintiff, Jeremy Myers, replies as follows to Defendant's Response to Plaintiff's Motion to Compel Discovery and as grounds therefore shows to the Court:

Three –month, 24 Hour Video Surveillance

1. Defendant either misunderstands, or intentionally misconstrues, the nature of Plaintiff's request in his interrogatory #8 as stated in Defendant's Response. Plaintiff's Amended Complaint alleges, among other things, not only that the video was relied upon by Defendant for purposes of obtaining the No Knock Search Warrant, but also that there is nothing in the video which supports or justifies either the affidavit for warrant or the entire investigation. As an element of malice and wrong doing, Plaintiff alleges that Defendant knowingly falsified his affidavit for a search warrant and also recklessly and with malice ignored the obvious and known facts in his possession, that

the information provided by the "reliable" informant was anything but reliable. Further, it is Plaintiff's contention that even after the search revealed little to nothing, Defendant persisted in his pursuit of Plaintiff.

2. If Defendant's assertions are true as to the length of the video surveillance, then it is not possible that Defendant's assertions in his affidavit for a search warrant are true as he would not have had time to review the surveillance tape before he submitted his affidavit. It is unlikely that Defendant Koopman ever reviewed the video surveillance tape.

3. Moreover, as previously argued by Plaintiff, the information from the video surveillance that the Defendant used for his search warrant *and* to justify his investigation is purely subjective. Plaintiff cannot read Defendant's mind. Nor can Plaintiff substitute his own interpretation of what he might view for that of the Defendant at the time the Defendant conducted his investigation and prepared the affidavit.

4. The Defendant will be required to testify at his trial. If he is unable to point to any part of the video surveillance to support or justify his investigation and/or the information from the CI, which Defendant represented to be reliable, then the obvious alternative is to have the jury view the entire video. By the Defendant's own admission, this would take a jury 54 weeks of non-stop viewing. This is not practical and can easily be remedied by Defendant identifying the information *he* used as he prepared his case. For these reasons it is necessary for Plaintiff to have knowledge of the confidential informant(s), the information they provided, and their backgrounds insofar as Defendant represented the informant had previously been reliable.

5. Defendant cites *Concept Industries, Inc. v. Carpet Factory, Inc.* 59 F.R.D. 546, 548, 550 (E.D. Wis. 1973) to support his argument that Plaintiff should first post a bond if Defendant is required to answer interrogatory No. 8. This authority is not from this jurisdiction and is not helpful to this case. Additionally, the case holding is misstated in that in *Concept Industries* the court noted both an objection as to relevance and made its ruling based on the doubtful relevance of the requested information. Neither event is applicable here.

Plaintiff's Interrogatory No. 12

6. Defendant submitted an affidavit to this court on April 20, 2010, in which he stated, "several people who are employed in close proximity to 1101 N. Madison, Loveland, CO have *all* reported hearing gun shots late at night coming from the property" (emphasis added). When asked to provide detail, Defendant can no longer remember the several people he swore existed. The affidavit was filed barely two years ago.

7. Generally, law enforcement, when they take reports in the course of their duties, complete a written report of a reported event which would include information such as witness names and other contact information. If Defendant persists in his answer, it is likely he embellished his April 2010 affidavit in the same manner that he embellished his affidavit for the search warrant.

Gun Shot Complaint Documents

8. Plaintiff requested copies of documents produced as a result of the gun shot complaints was in reference to his request for information as to Interrogatory No. 12.

The documents would pertain to the "several" people Defendant reported complained of gunshots that he referenced in his April 2020 affidavit. Providing documents of 2008 and 2012 reports, long after this incident occurred is not responsive to the question.

WHEREFORE, Plaintiff respectfully requests that the Court grant the motion to compel for those reasons stated above.

DATED the 18th day of May, 2012.

RANDALL R. MEYERS:

s/ Randall Meyers
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CERTIFICATE OF SERVICE

I hereby certify that on May 18th, 2012, I electronically filed the foregoing PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY with the Clerk of Court using CM/ECF system which will send notification of such filing to the following e-mail addresses:

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s/ Dominique Easton