

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKETING STATEMENT

Case Name: Brian Koopman, appellant v. Jeremy C. Myers, appellee

Appeal No. (if available) : 11-1299

Court/Agency Appeal From: United States District Court for the District of Colorado

Court/Agency Docket No.:09-CV-02802-REB-MEH District Judge: Robert E. Blackburn

Party or Parties filing Notice of Appeal/Petition: Brian Koopman, defendant

I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW

A. APPEAL FROM DISTRICT COURT

1. Date notice of appeal filed: July 1, 2011

- a. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal: NO
- b. Is the United States or an officer or an agency of the United States a party to this appeal? NO

2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. 4 (a)(1)(A) <u>X</u>	Fed. R. App. 4(a)(6) <u> </u>
Fed. R. App. 4 (a)(1)(B) <u> </u>	Fed. R. App. 4(b)(1) <u> </u>
Fed. R. App. 4 (a)(2) <u> </u>	Fed. R. App. 4(b)(3) <u> </u>
Fed. R. App. 4 (a)(3) <u> </u>	Fed. R. App. 4(b)(4) <u> </u>
Fed. R. App. 4 (a)(4) <u> </u>	Fed. R. App. 4(c) <u> </u>
Fed. R. App. 4 (a)(5) <u> </u>	
Other: <u> </u>	

3. Date final judgment or order to be reviewed was filed and **entered**

on the district court docket: June 17, 2011

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b). NO

(If the order being appealed is not final, please answer the following questions in this section.)

- a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done? NO
- b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? NO
- c. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable? 28 U.S.C. §1291 and the collateral order doctrine. See *Robinson v. Volkswagenwerk AG*, 940 F.2d 1369, 1370 (10th Cir. 1991).

5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

- a. Give the filing date of any motion under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal any motion for judgment of acquittal, for arrest of judgment or for new trial, filed in the district court: N/A
- b. Has an order been entered by the district court disposing of that motion, and, if so, when? N/A

6. Bankruptcy Appeals. (To be completed only in appeals from a judgment, order or decree of a district court in a bankruptcy case or from an order of the Bankruptcy Appellate Panel.)

Are there assets of the debtor subject to administration by a district or bankruptcy court? _____

Please state the approximate amount of such assets, if known.

B. REVIEW OF AGENCY ORDER (To be completed only in connection with petitions for review or applications for enforcement filed directly with the Court of Appeals.)

1. Date petition for review was filed: _____
2. Date of the order to be reviewed: _____
3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order: _____

4. Specify the time limit for filing the petition (cite specific statutory section or other authority): _____

C. APPEAL OF TAX COURT DECISION

1. Date notice of appeal was filed: _____
(If notice was filed by mail, attach proof of postmark.)
2. Time limit for filing notice of appeal: _____
3. Date of entry of decision appealed: _____
4. Was a timely motion to vacate or revise a decision made under the Tax Court=s Rules of Practice, and if so, when? *See Fed. R. App. P. 13(a)* _____

II. **LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S).** If none, please so state.

NONE

III. **GIVE A BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW.**

This case involves a civil rights malicious prosecution claim deriving from a search of Plaintiff's premises that occurred on September 7, 2007, pursuant to a search warrant and the prosecution of Plaintiff following the search, which prosecution was dismissed before trial. Appellant Koopman was the police detective who investigated the case, applied for the search warrant, arrested Plaintiff and initiated the criminal prosecution. Koopman sought and was denied absolute prosecutorial immunity, including immunity in connection with his testimony in the preliminary hearing in the criminal case.

IV. **ISSUES RAISED ON APPEAL.**

- A. Whether Koopman is entitled to share in absolute prosecutorial immunity as to the sole §1983 claim for "malicious prosecution" alleged to be in violation of Plaintiff's Fourth and Fourteenth Amendment Due Process rights, pursuant to *Albright v. Oliver*, 510 U.S. 266, 279 n.5 (1994) (*Ginsburg, J.*, concurring) and *Taylor v.*

Meacham, 82 F.3d 1556, 1563 n.8 (10th Cir. 1986).

- B. Whether Koopman is alternatively entitled to share in absolute prosecutorial immunity for all actions taken by him after the charging criminal information was filed initiating the prosecution of Plaintiff.
- C. Whether Koopman is alternatively entitled to absolute immunity in connection with his testimony at the preliminary hearing in the underlying criminal case.

V. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.

- A. Does this appeal involve review under 18. U.S.C. 3742(a) or (b) of the sentence imposed? _____
- B. If the answer to question in A is yes, does the defendant also challenge the judgment of conviction? _____
- C. Describe the sentence imposed. _____

- D. Was the sentence imposed after a plea of guilty? _____
- E. If the answer to question D is yes, did the plea agreement include a waiver of appeal and/or collateral challenges? _____
- F. Is defendant on probation or at liberty pending appeal? _____
- G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed? _____

NOTE: In the event expedited review is requested, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered at the time of appeal by completing and delivering the transcript order form to the clerk of the district court when a notice of appeal is filed. Defendant/appellant must refrain from ordering any unnecessary transcript as this will delay the appeal. If the court orders this appeal expedited, it will set a schedule for preparation of necessary transcripts, for designation and preparation of the record on appeal, and for filing briefs. If issues other than sentencing are raised by this appeal, the court will decide whether bifurcation is desirable.

VI. INDICATE WHETHER ORAL ARGUMENT IS DESIRED IN THIS APPEAL. If so, please state why.

YES. Oral argument would be helpful because the first two issues raised on appeal above involve an “open issue,” *see Albright v. Oliver*, 510 U.S. 266, 279 n.5 (Ginsberg, J. concurring) (*citing Stevens, J.*, dissenting, 510 U.S. at 831, n.26). The third issue raised on appeal above represents a requested extension of *Briscoe v. Lahue*, 460 U.S. 325, 326 (1983) (in litigation brought under §1983, all witnesses—police officers as well as lay witnesses—are absolutely immune from civil liability based on their testimony in judicial proceedings) and *Anthony v. Baker*, 955 F.2d 1395, 1400 (10th Cir. 1992) (“In this Circuit, we extended *Briscoe* beyond the trial itself to judicial proceedings generally,” and recognizing that other circuits have granted absolute immunity to a witness testifying in a pre-trial setting, including testimony at adversarial preliminary hearings), and seeks to have this Court reconsider its conclusion in *Anthony* that a complaining witness—as distinguished from a lay witness—is not entitled to absolute immunity in a malicious prosecution action for testimony given at a preliminary hearing “if that testimony is relevant to the manner in which the complaining witness initiated or perpetuated the prosecution,” 955 F.2d at 1401-02, in light of Justice Ginsburg’s concurring opinion in *Albright, supra*.

VII. ATTORNEY FILING DOCKETING STATEMENT:

Name: Kent N. Campbell Telephone: (970) 482-4011

Firm: Wick & Trautwein, LLC

Email Address: kcampbell@wicklaw.com

Address: 323 S. College Avenue, #3, Fort Collins, CO 80524

PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

A. Appellant

Petitioner

Cross-Appellant

B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS

Retained Attorney

Court-Appointed

Employed by a government entity
(please specify)

Employed by the Office of the Federal Public Defender.

Signature

Date

Attorney at Law

NOTE: A copy of the court or agency docket sheet, the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any motion filed under Fed. R. Civ. P. 50(b), 52(b), 59, or 60, including any motion for reconsideration, for judgment of acquittal, for arrest of judgment, or for new trial, and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order, and the notice of appeal or petition for review **must be submitted with the Docketing Statement**, except as otherwise provided in Section I of the instructions.

The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF may be found on the court's website, www.ca10.uscourts.gov.

This Docketing Statement must be accompanied by proof of service.

The following Certificate of Service may be used.

CERTIFICATE OF SERVICE

I, appellant's attorney, Kent N. Campbell, hereby certify that on

July 6, 2011 I served a copy of the foregoing **Docketing Statement** to:

Randall R. Meyers, Esquire, at 315 West Oak Street, Suite 100, Fort Collins, Colorado 80521, randy.meyers@att.net, the last known address/email address, by email.



Signature

7/6/11

Date

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