

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.

REPLY TO DEFENDANT KOOPMAN'S RESPONSE TO MOTION TO CERTIFY
APPEAL AS FRIVOLOUS AND FORFEITED
(DOCKET #158, FILED 08/05/2011)

COMES NOW Plaintiff, by and through his Attorney Randall R. Meyers, and for
his Reply, states as follows:

1. Defendant identifies three issues he intends to raise on appeal:
 - A. Whether Koopman is entitled to share in absolute prosecutorial immunity as to the claim of malicious prosecution;
 - B. Whether Koopman is entitled to share in absolute prosecutorial immunity for all actions taken by him after charges were filed;
 - C. Whether Koopman is entitled to absolute immunity for his testimony at the preliminary hearing.

2. Of the three issues, Defendant Koopman acknowledges that the first two are what he describes as an "open issue", meaning he has no statutory or case authority supporting such a claim. Defendant further acknowledges that the essence of his appeal is based on little more than an "observation" made through dicta in a concurring

opinion in *Albright v. Oliver*, 510 U.S. 266, 279 n.5 (1994). In the ensuing 17 years since *Albright* was decided, the U.S. Supreme Court has never extended absolute immunity to law enforcement. If, in fact, this area of law is unsettled and emerging, as claimed by Defendant, then it has been so for the past 17 years. He cannot properly be said to be availing himself of all constitutional protections and defenses because there are no such constitutional rights or defenses to absolute immunity in this instance.

The focus in *Albright*, of course, centered around whether the defendant's claim was more properly a Fourteenth Amendment claim or a Fourth Amendment claim. Such is not an issue here since the District Court specifically found that Plaintiff had not stated a Fourteenth Amendment claim but had stated a viable claim under the Fourth Amendment, citing both *Albright* and *Taylor v. Meacham*, 82 F.3d 1556, 1560 (10th Cir. 1996). (DOCKET #140, FILED 06/17/2011, pgs. 7 and 8)

3. In the third issue raised in Defendant's appeal he begs the Court to protect him from his perjured testimony at the preliminary hearing, an issue Plaintiff raises as but one example of the malice shown in the malicious prosecution claim. Had Koopman reviewed *Anthony v. Baker*, 955 F.2d 1395 (10th Cir. 1992) more circumspectfully he would have concluded that the issue he now raises has already been decided. In *Baker*, the request for absolute immunity for a police officer at a preliminary hearing was considered and denied. A more careful reading of *Baker* also establishes that "the one asserting absolute immunity must demonstrate clear entitlement", *Burns v. Reed*, 500 U.S. 478, 111 S.Ct. 1934 (1991), and that Koopman's larger claim of absolute immunity

for police officers in an instance such as here has already been denied by the U.S. Supreme Court in *Malley v. Briggs*, 106 S.Ct. 1092, 1095 (1986).

4. In short, Defendant presents no authoritative basis for his appeal other than his preference to escape liability for his actions.

5. Plaintiff legitimately complains that from the onset of this action, Defendant, either solely or in conjunction with other defendants, has motioned the Court in a manner so as to stay discovery as early as 30 days after the case was filed (DOCKET #18, FILED 01/08/2010). Defendant subsequently tried to obtain immunity for himself, more traditionally in the manner of qualified immunity, staying discovery. (DOCKET #56, FILED 04/25/2010). Having failed in those efforts, Defendant now seeks to create new law cloaking himself in absolute immunity, again staying discovery in the process.

6. It is with commonsense clarity that Plaintiff sees that the primary objective of Defendant is to avoid the disclosure of the reckless, malicious, and shamefully unprofessional acts of the Defendant.

WHEREFORE, Plaintiff respectfully requests the Court grant his Motion to Certify Defendant's Appeal as Frivolous and Forfeited, and for any further relief the Court deems just and proper.

DATED the 19th day of August, 2011.

RANDALL R. MEYERS:

s/ Randall Meyers
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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 19th day of August 2011, I electronically filed the foregoing REPLY TO DEFENDANT KOOPMAN'S RESPONSE MOTION TO CERTIFY APPEAL AS FRIVOLOUS AND FORFEITED with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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And I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner indicated by the non-participants name:

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