

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:09-cv-02802-REB- MEH

JEREMY C. MYERS,

Plaintiff,

v.

BRIAN KOOPMAN, in his individual capacity,

Defendant.

DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION FOR LEAVE TO SUPPLEMENT DEFENDANT'S
MOTION FOR JUDGMENT ON THE PLEADINGS

DEFENDANT Brian Koopman ("Koopman"), by and through his attorneys, the Loveland City Attorney's Office and Wick & Trautwein, LLC, hereby provides the following Reply to Plaintiff's Response to Defendant's Motion for Leave to Supplement Defendant's Motion for Judgment on the Pleadings (Docket #185, filed 04/12/2012) ("Response"):

1. Although it is difficult to comprehend the Response insofar as Plaintiff Jeremy Myers' ("Myers") arguments pertaining to *Rehberg v. Paulk*, 566 US ____ (2012), 2012 WL1069091 (U.S.) are concerned, it appears that Myers concedes that *Rehberg* may stand for the proposition that Koopman is immune from civil liability to Myers in connection with Koopman's preliminary hearing testimony. Myers, however, does not in his Response appear to address the Court's language in *Rehberg*, emphasizing that "it is the prosecutor, who is shielded by absolute immunity, who is

actually responsible for the decision to prosecute,” and not the police officer who investigates the criminal case, insofar as *Rehberg* may stand for the proposition that Myers has no “malicious prosecution” claim against Koopman at all.

2. Myers’ argument in his Response addressing *Becker v. Kroll*, 494 F.3d 904 (10th Cir. 2007) is inappropriate inasmuch as Myers’ Motion for Leave to Supplement Defendant’s Motion for Judgment on the Pleadings (Docket #180, filed 04/05/2012) did not address *Becker*. The parties’ arguments concerning the effect and implications of *Becker* in this case have already been fully briefed and argued in the parties’ various briefs filed in support of or in opposition to Defendant’s Motion for Judgment on the Pleadings (Docket #169, filed 03/08/2012) (“Motion”). Further, Myers’ analysis of *Becker* set forth in his Response overlooks that the Tenth Circuit in *Becker* recognized that a “significant restriction on liberty” is a prerequisite to a claim of malicious prosecution. *Becker*, 494 F.3d at 915. Myers overlooks that a *pre-charging* restriction on liberty, while finding its constitutional support in the Fourth Amendment, serves as the basis for a cause of action other than malicious prosecution, such as false arrest, false imprisonment, unlawful seizure and the like as more fully argued in the Motion.

3. To the extent Myers contends that Koopman has misread *Becker*, Myers is incorrect.

WHEREFORE, Koopman respectfully renews his request that the Court grant him judgment on the pleadings, or, alternatively, partial judgment on the pleadings.

DATED this 18th day of April, 2012.

WICK & TRAUTWEIN, LLC

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 18th, 2012, I electronically filed the foregoing DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR LEAVE TO SUPPLEMENT DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS 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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