

**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 SUBMISSION OF LEGAL AUTHORITIES TO MAGISTRATE
JUDGE HEGARTY RE: LEGALITY AND CONDITIONS OF *IN CAMERA*
EXAMINATION OF CONFIDENTIAL INFORMANTS**

DEFENDANT Brian Koopman ("Koopman"), by and through his attorneys, the Loveland City Attorney's Office and Wick & Trautwein, LLC, hereby submits the following legal authorities to Magistrate Judge Hegarty regarding the legality and conditions of an *in camera* examination by the Court, suggested by Magistrate Judge Hegarty, of confidential informants who were the subject of Judge Hegarty's Minute Order [#187, filed 04/12/2012], which legal authorities Judge Hegarty solicited during the Status Conference held on April 26, 2012 [#193, filed 04/26/2012]:

1. *Gaines v. Hess*, 662 F.2d 1364, 1369 (10th Cir. 1981) ("[A]n *in camera* hearing is the appropriate procedural vehicle for determining whether the informant's testimony would lend significant credence to [criminal defendant's] defense. Such a procedure will limit the extent of the disclosure of the informant's identity and information, thereby protecting the State's interest in avoiding unnecessary disclosure,

while at the same time it will safeguard defendant's right to the testimony of any accessible witness who may be significantly helpful to his defense. . . . Numerous other circuits have approved the in camera hearing as a device to ensure proper application of the *Roviaro* test. . . . The in camera procedure has the advantage of giving the trial court considerable flexibility in determining if disclosure is warranted. . . . We leave to the discretion of the trial court how best to determine the relevance of the informant's testimony, although the in camera proceedings should be transcribed and sealed to permit meaningful review while retaining limited disclosure.

2. *United States v. Morales*, 908 F.2d 565, 569 (10th Cir. 1990) ("In *Gaines v. Hess*, 662 F.2d 1364 (10th Cir. 1981), we affirmed the use of an *in camera* hearing to determine whether an informant's testimony would lend significant credence to a defendant's defense." [citing *United States v. Perez-Gomez*, 638 F.2d 215, 218 (10th Cir. 1981); *Garcia v. United States*, 373 F.2d 806, 808 (10th Cir. 1967)]) (recognizing that other circuits have approved the use of *in camera* proceedings to assess the relevance of an informant's testimony and to ensure proper application of the *Roviaro* test) (remanding for the district court to hold *in camera* hearings to determine relevance of the informant's testimony and whether disclosure is warranted, and to ascertain the government's interests in resisting disclosure and production, "leave[ing] to the discretion of the trial court how best to conduct these proceedings," but indicating that "the *in camera* hearings should be transcribed and sealed to permit meaningful review while retaining limited disclosure."").

3. *United States v. Perez-Gomez*, 638 F.2d 215, 218 (10th Cir. 1981) ("This Court has previously determined that an in camera hearing on the discoverability of an

informer, conducted without the presence of the [criminal] defendant or his counsel, is not an abuse of discretion.”).

4. *United States v. Fairchild*, 122 F.3d 605, 610 (8th Cir. 1997) (“Important policy considerations exist for not allowing [criminal] defendants or their counsel to attend such [in camera informants’] hearings”).

5. *United States v. Morales*, 917 F.2d 18 (10th Cir. 1990) (describing without criticism procedure used by district court to conduct *in camera* hearing to determine whether disclosure of government informant’s identity was warranted and whether government had a *bona fide* interest in resisting disclosure: “The district court conducted a hearing at which it asked counsel for the government and the defendant to submit questions to be asked of the informant. The court then excused counsel and brought the informant into a closed courtroom for interrogation. At the conclusion of the proceeding, the court made findings of fact, which it sealed. These findings, together with the sealed transcript of the *in camera* hearing, have been transmitted to us for further review.”).

6. *In the Matter of the Search of 1638 E. 2nd Street, Tulsa, Oklahoma*, 993 F.2d 773, 775 n.3 (10th Cir. 1993) (“If the district court holds such a [informants’ *in camera*] hearing, it may, if necessary, file its findings and reasoning under seal to preserve the confidentiality of the informant’s identity yet still provide for meaningful appellate review.”).

7. *United States v. Mendoza-Burciaga*, 981 F.2d 192, 195 (5th Cir. 1992) (speaking approvingly of district court practice by which the court tape recorded questions posed by the criminal defendant’s counsel before the *in camera* hearing and

then had the government agents/confidential informant furnish their answers during the *in camera* hearing, during which the court itself vigorously questioned government counsel and the agents).

8. *United States v. Johnson*, 65 Fed. Appx. 628, 2003 WL 21259785 (9th Cir. 2003) (criminal defense counsel was allowed to submit a list of questions for the district court to ask of the government's confidential informant during *in camera* hearings).

Undersigned defense counsel, Kent N. Campbell, did not, during legal research, find any reported cases specifically dealing with *in camera* examinations of confidential informants within the context of a Section 1983 civil rights suit.

DATED this 30th day of April, 2012.

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CERTIFICATE OF FILING

I hereby certify that on April 30th, 2012, I electronically filed the foregoing DEFENDANT'S SUBMISSION OF LEGAL AUTHORITIES TO MAGISTRATE JUDGE HEGARTY RE: LEGALITY AND CONDITIONS OF IN CAMERA EXAMINATION OF CONFIDENTIAL INFORMANTS with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following e-mail address:

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