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States Court of Appeals  
for the Third Circuit

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7-14-2015

# Zachary Barker v. Boeing Co

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 14-3009

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ZACHARY BARKER;  
FRANCIS X. BOYD, JR.; DAVID W. SMITH

v.

THE BOEING COMPANY

Francis X. Boyd, Jr. and David W. Smith,  
Appellants

On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
District Court No. 2-12-cv-06684  
District Judge: The Honorable Luis Felipe Restrepo

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)  
July 13, 2015

Before: SMITH, GREENAWAY, JR., and SHWARTZ, *Circuit Judges*

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JUDGMENT ORDER

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This cause came on to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted on July 13, 2015. Francis X. Boyd, Jr., and David W. Smith, both of whom are Caucasian, alleged that their former employer, the Boeing Company, discriminated against them on the basis of their race, in violation of 42 U.S.C. § 1981, when it terminated their employment after

they appeared in a photograph taken at work with a third employee looking like members of the KKK. The District Court granted summary judgment in favor of Boeing. It concluded that Boyd and Smith failed to establish a prima facie case of race discrimination because they were not similarly situated to Kenta Smith, the African-American employee who took the photograph and reported the incident. In addition, the Court reasoned that “[e]ven if a jury could somehow find that the evidence met the prima facie threshold,” “[t]here is no evidence that could lead a reasonable jury to conclude that Boeing did not really fire the plaintiffs for posing as the KKK, or that a more likely cause was Boeing’s animus toward” Caucasians. A10. This timely appeal followed.

The District Court had jurisdiction under 28 U.S.C. § 1331. Appellate jurisdiction exists under 28 U.S.C. § 1291. We exercise plenary review over an order granting summary judgment. *Brown v. J. Kaz, Inc.*, 581 F.3d 175, 179 (3d Cir. 2009). For substantially the same grounds set forth in the well-reasoned opinion of the District Court, we will affirm the District Court’s judgment in favor of Boeing.

On consideration whereof, it is now hereby ADJUDGED and ORDERED that the judgment of the District Court entered May 15, 2014, be and the same is hereby AFFIRMED. Costs taxed against Appellants.

By the Court,

s/D. Brooks Smith  
Circuit Judge

Attest:

s/Marcia M. Waldron  
Clerk

DATED: July 14, 2015