

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

December 20, 2011

Elisabeth A. Shumaker
Clerk of Court

JASON KERNS; ARCHIE KERNS;
MARY ANN KERNS,

Plaintiffs - Appellees,

v.

Albuquerque Police Department Officers
DREW BADER; MATT THOMPSON;
RUSSELL CARTER, in their individual
capacities,

Defendants - Appellants,

and

BOARD OF COMMISSIONERS OF
BERNALILLO COUNTY; Bernalillo
County Sheriff DARREN WHITE, in his
individual and his official capacity;
Bernalillo County Sheriff's Detectives
BRIAN LINDLEY; RALPH
GONZALES; JAMES HAMSTEN, in
their individual capacities; Bernalillo
County Sheriff Deputies LAWRENCE
KOREN; SEAN CONNORS; AARON
WRIGHT; TIMOTHY HIX; RHONDA
MOYA, in their individual capacities;
THE CITY OF ALBUQUERQUE;
Albuquerque Police Department Officers
ROBERT JOHNSTON; JAMES
MONTROYA, in their individual
capacities; Metropolitan Forensic Science
Center Firearm and Tool Mark Examiner

No. 09-2273

(D.C. No. 1:07-CV-00771-JB-ACT)

(D.N.M.)

MIKE HAAG, in his individual capacity;
JOHN DOES 1-10, in their individual
capacities,

Defendants.

JASON KERNS; ARCHIE KERNS;
MARY ANN KERNS,

Plaintiffs - Appellees,

v.

BOARD OF COMMISSIONERS OF
BERNALILLO COUNTY;
BERNALILLO COUNTY SHERIFF
DARREN WHITE, in his individual and
his official capacity; BERNALILLO
COUNTY SHERIFF DETECTIVE
BRIAN LINDLEY; BERNALILLO
COUNTY SHERIFF DEPUTY,
LAWRENCE KOREN,

Defendants - Appellants,

and

BERNALILLO COUNTY SHERIFF'S
DETECTIVES RALPH GONZALES, and
JAMES HAMSTEN, in their individual
capacities; SEAN CONNORS, AARON
WRIGHT, TIMOTHY HIX, and
RHONDA MOYA, in their individual
capacities; THE CITY OF
ALBUQUERQUE, ALBUQUERQUE
POLICE DEPARTMENT OFFICER
DREW BADER, MATT THOMPSON,
RUSSELL CARTER, ROBERT

No. 10-2103

(D.C. No. 1:07-CV-00771-JB-ACT)

(D.N.M.)

JOHNSTON and JAMES MONTOYA, in their individual capacities; METROPOLITAN FORENSIC SCIENCE CENTER FIREARM AND TOOL MARK EXAMINER MIKE HAAG, in his individual capacity; and JOHN DOES 1-10, in their individual capacities,

Defendants.

JASON KERNS; ARCHIE KERNS; MARY ANN KERNS,

Plaintiffs - Appellees,

v.

METROPOLITAN FORENSIC SCIENCE CENTER FIREARM AND TOOL MARK EXAMINER MIKE HAAG, in his individual capacity,

Defendant - Appellant,

and

BOARD OF COMMISSIONERS OF BERNALILLO COUNTY, BERNALILLO COUNTY SHERIFF DARREN WHITE, in his individual and his official capacity; BERNALILLO COUNTY SHERIFF'S DETECTIVES BRIAN LINDLEY, RALPH GONZALES, and JAMES HAMSTEN, in their individual capacities; BERNALILLO

No. 10-2106
(D.C. No. 1:07-CV-00771-JB-ACT)
(D.N.M.)

COUNTY SHERIFF DEPUTIES
LAWRENCE KOREN, SEAN
CONNORS, AARON WRIGHT,
TIMOTHY HIX, and RHONDA MOYA,
in their individual capacities; THE CITY
OF ALBUQUERQUE, ALBUQUERQUE
POLICE DEPARTMENT OFFICERS
DREW BADER, MATT THOMPSON,
RUSSELL CARTER, ROBERT
JOHNSTON and JAMES MONTOYA,
in their individual capacities; and JOHN
DOES 1-10, in their individual capacities,

Defendants.

JUDGMENT

Before **O'BRIEN, HOLLOWAY, and GORSUCH**, Circuit Judges.

These cases originated in the District of New Mexico and were argued by counsel.

The judgments of that court are reversed. The cases are remanded to the United States District Court for the District of New Mexico for further proceedings in accordance with the opinion of this court.

The district court's order denying qualified immunity with respect to Mr. Kerns's Fourth Amendment claim against Officers Bader, Thompson, and Carter, is vacated and that matter is remanded for further proceedings consistent with the guidance provided above. The district court's order denying qualified immunity with respect Mr. Kerns's

claims against Sheriff White, Deputy Lindley, Deputy Koren, and Mr. Haag, is reversed and the court is directed to grant dismissal to these defendants on the basis of qualified immunity. We have no occasion to reach the defendants' other arguments as to why they should be entitled to absolute or qualified immunity. Similarly, Deputy Lindley's and Deputy Koren's argument that the district court ruled on their summary judgment motion prematurely is mooted by our reversal in their favor.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk