

May 5, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-50305  
Summary Calendar

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VICTOR BUSTOS, SR.,

Plaintiff-Appellant,

versus

CITY OF EL PASO TEXAS; EL PASO POLICE DEPARTMENT, Narcotics  
Division; CESAR DIAZ, Narcotics Detective; JOHN MASIAS,  
Narcotics Detective; RUBEN TREJO, Narcotics Detective; JAIME  
ESPARZA, District Attorney; HOLLY LYTTLE, Assistant District  
Attorney,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-04-CV-3-PRM  
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Before JOLLY, DAVIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Victor Bustos, Sr., Texas prisoner #1018856, seeks to  
proceed in forma pauperis ("IFP") to appeal the dismissal of his  
42 U.S.C. § 1983 complaint for failure to state a claim. Bustos  
alleged, inter alia, that El Paso Narcotics Division Detective  
Ruben Trejo initiated a traffic stop of his van on the orders of  
Detective Cesar Diaz, despite lack of probable cause. He also

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that  
this opinion should not be published and is not precedent except  
under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

alleged that Detective John Masias made false statements in an affidavit regarding marijuana that was found in his van during the stop.

By moving to proceed IFP, Bustos is challenging the district court's certification that his appeal was not taken in good faith. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). Our review of the record indicates that Bustos's allegations state a claim under the Fourth Amendment. See e.g., *Estep v. Dallas County, Texas*, 310 F.3d 353, 356 & n.1 (5th Cir. 2002). Whether the facts ultimately will prove a Fourth Amendment claim is not a question to be answered at this stage of the proceedings. See *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

Accordingly, the motion to proceed IFP is GRANTED. The district court's dismissal of Bustos's claims against the El Paso Police Department Narcotics Division and the City of El Paso, and its dismissal of any claims against district attorneys Esparza and Lytle, are affirmed. As to Bustos's claim that his Fourth Amendment rights were violated when Detectives Trejo and Diaz conducted a traffic stop without probable cause, the judgment and certification decision are VACATED, and the case is REMANDED for further proceedings.

IFP GRANTED; AFFIRMED IN PART, VACATED AND REMANDED IN PART.