

FILED

January 14, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40842
Summary Calendar

DETROY DECKARD,

Plaintiff-Appellant,

versus

JOHN CATOE,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:02-CV-37

Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Detroy Deckard appeals the district court's order granting the motion for summary judgment filed by appellee, Deputy Sheriff John Catoe, and dismissing on grounds of qualified immunity his complaint raising claims of false arrest and malicious prosecution. The summary judgment evidence reflects that Catoe mistakenly identified Deckard as the person who sold him crack cocaine during an undercover investigation. There is no genuine issue whether Catoe knew the identification was erroneous or whether Catoe acted with reckless disregard for the truth. See

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Freeman v. County of Bexar, 210 F.3d 550, 553 (5th Cir. 2000).

Catoe's identification of Deckard as the perpetrator, although mistaken, was not objectively unreasonable based upon information available to Catoe at the time he made the identification. See Wren v. Towe, 130 F.3d 1154, 1158 (5th Cir. 1997). The dismissal of Deckard's false-arrest claim is affirmed. Because there is no reason to believe that Catoe's actions were malicious, the dismissal of the malicious-prosecution claim is also affirmed. See Goodson v. City of Corpus Christi, 202 F.3d 730, 739 (5th Cir. 2000).

AFFIRMED.