IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EARL F. WHITMORE, Plaintiff,	:	
v.	:	**CIVIL ACTION NO. 96-2745**
DENNIS J. SMITH, and UPPER MT. BETHEL TOWNSHIP Defendants.	:	

M E M O R A N D U M

Cahn, C.J. July _____, 1997

I. INTRODUCTION

Plaintiff, Earl Whitmore, Sr., ("Whitmore") filed this lawsuit against Defendants Dennis J. Smith ("Smith") and Upper Mt. Bethel Township ("Township") pursuant to 42 U.S.C. § 1983 alleging violations of his Fourth, Fifth, and Fourteenth Amendment rights. Whitmore's three count complaint alleges that Smith arrested him without probable cause, searched his trailer without probable cause, and falsely imprisoned him. Whitmore also alleges that Smith's actions were the direct result of the policies, customs, and practices of the Township. Defendants have moved for summary judgment pursuant to Federal Rule of Civil Procedure 56. For the following reasons, the court will grant Defendants' Motion.

II. FACTS

Taken in the light most favorable to Whitmore, the non-moving party, the facts are as follows. On September 8, 1993, Smith, a police officer employed by the Township, went to the home of

Kenneth and Beth Bell after receiving information that the Bells' child Megan, age five, had been sexually assaulted by several individuals in the neighborhood. Smith brought Megan, her brother (Christopher, age eight), and Mrs. Bell to the police station to interview the children about the alleged assaults.

During Smith's interview of Megan,[1] she stated that Danny Paolini (a juvenile) and "Earl" had tied Megan to a tree and placed their "wieners" in her mouth. See Defendants' Appendix to Motion for Summary Judgment (hereinafter "Def. App.") at 3 (Supplemental Incident Report of Dennis Smith). Megan told Smith that she was having nightmares because Paolini and Earl said that the police would put her in jail if she told anyone what had happened. Id. She also stated that Paolini had placed his fingers in her vagina on several occasions.[2] Id.

Smith conducted an audiotaped interview of Christopher that

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[1] Defendants claim this interview was audiotaped, but no such tape has been found.

[2] Defendants contend that during this interview, Megan made reference to a person named "Bub" who had sexually assaulted her. When Mrs. Bell and Smith asked who "Bub" was, she told them "Earl." Both Mrs. Bell and Smith thought Megan was referring to Earl Whitmore, Jr. (Plaintiff Whitmore's son). Later, Mrs. Bell realized that Megan was actually referring to Earl Whitmore, Sr. when she spoke about "Bub." See Def. App. at 164-68 (Smith Dep.). Mrs. Bell immediately conveyed this information to Smith. Plaintiff contends it is impossible to verify Defendants' claim because the audiotape of Megan's interview is unavailable. Furthermore, Plaintiff asserts, the audiotaped interviews of Christopher and Matthew Mucklin (a child who allegedly witnessed assaults on Megan) made no mention of a person named "Bub." The court need not resolve this dispute because, as discussed infra, subsequent interviews gave Smith probable cause to conclude that Earl Whitmore, Sr. had sexually assaulted both Megan and Christopher.

same evening. Christopher stated that Paolini had sexually assaulted Megan on two different occasions. Christopher also said that a juvenile named William Wilson told him that he (Wilson) and Whitmore, Jr. had taken Megan into a wooded area behind the Bell residence, tied Megan to a tree, and "raped" her. Id. at 2. Christopher did not know what "raped" meant, but thought it meant they did something bad to her. He also stated that Whitmore, Jr. had threatened him on another occasion with what he told Christopher was a loaded .22 caliber handgun if he or Megan told anyone about what Whitmore, Jr. had done to Megan. During this interview, Christopher did not mention any adult being involved in these assaults, nor did he discuss whether he had been sexually abused.

Smith also conducted an audiotaped interview of Matthew Mucklin, age eleven, on September 8. Mucklin recounted that he had witnessed Megan being sexually assaulted at least twice by Paolini, once in the summer of 1992 and once in late July or early August 1993. Mucklin made no mention of an adult sexually assaulting Megan or of any assault on Christopher.

Soon after conducting these interviews, Smith contacted Martin Burnard, a caseworker at the Northampton County Office of Children and Youth Services, to assist him in the investigation. Burnard interviewed Megan and Christopher separately at their school on September 9, 1993. Megan told Burnard that two boys, Daniel and Earl, each placed their penis in her mouth and that Daniel had put his finger in her vagina. Burnard then asked her to undress an

anatomically-correct male doll. Megan became extremely upset after seeing the doll's penis and would not discuss the assault any further. Burnard assisted Mrs. Bell in making an appointment for Megan with Dr. Eugene Decker, a physician under contract in New Jersey to conduct examinations in sexual assault cases.

Christopher told Burnard that he and Mucklin witnessed an incident where five juveniles, including Whitmore, Jr. and Paolini, tied Megan to a tree, and each put their penis in her mouth. Paolini also performed digital penetration on her. Christopher then stated that while the juvenile perpetrators were assaulting Megan, they spotted him and Mucklin and tried to get the two boys to place their penises in Megan's mouth. Christopher refused and was threatened with bodily harm if he told anyone what he had witnessed. At one point, a gun was put to his head. When Burnard asked Christopher whether anything else had happened to him, he just hung his head. Burnard telephoned Smith and told him he found Megan to be credible and concluded that a sexual assault had occurred. He also told Smith that he believed that Christopher might have been a victim of abuse by the juveniles. During Burnard's interviews, neither Megan nor Christopher stated that Plaintiff Whitmore was involved in these assaults.

On September 10, 1993, Smith contacted Assistant District Attorney Vicky Coyle and discussed the alleged assaults. They agreed that the five juveniles should be arrested. The five juveniles were arrested on September 10. That same day, Mrs. Bell telephoned Smith and informed him that Dr. Decker's medical

examination of Megan revealed evidence of vaginal insertion and sores in her mouth that could be a form of herpes. Smith then spoke with Dr. Decker directly, who confirmed these findings.

Burnard's next interview of Christopher occurred on September 13, 1993. Christopher took Burnard to the trails behind the Bell residence where the tree incident allegedly occurred. He showed Burnard where he and Mucklin hid when they witnessed the juveniles' assault on Megan. Christopher also said that Plaintiff Whitmore was present during this assault and was the first person to place his penis in Megan's mouth. Def. App. at 278-79 (Burnard Dep.); 338. He further alleged that Plaintiff Whitmore performed digital penetration on Megan and forced her to drink beer. In addition, Christopher stated that after he and Mucklin were spotted, the juveniles and Plaintiff Whitmore tried to force them into oral sex acts with Megan and to perform oral sex on Plaintiff Whitmore and the juveniles. Christopher told Burnard that he and Mucklin refused to do so.

The next day, September 14, 1993, Burnard interviewed Mucklin at his school. Mucklin immediately began to verbally attack Christopher, denied he had seen Megan being assaulted while tied to a tree, and denied that he and Christopher had discussed the incident the day before. Burnard then went to the Bell residence and attempted to interview Megan, but she was very hyperactive so Burnard was unable to conduct the interview. Mrs. Bell also informed Burnard that Christopher had to be brought back early from school on September 13 and 14 because he was too upset to remain

there.

Burnard interviewed Christopher on September 14 with his mother in the room. After going over information he had previously told Burnard, Christopher told his mother he wanted to speak to Burnard alone. Once alone, Christopher stated that during the incident when Megan was tied to the tree, the five juveniles and Plaintiff Whitmore made Christopher fondle their penises and that Paolini forced Christopher to perform anal sex on him.

On September 15, 1993, Burnard received a telephone call from Mrs. Bell, who said Christopher told her that he had been subjected to other forms of sexual abuse, including oral sex with Plaintiff Whitmore. She also told Burnard that Christopher had become physically ill the night before and vomited. In a telephone call on September 15, Mrs. Mucklin told Burnard that Mucklin had admitted to her that he and Christopher discussed the tree incident on September 13. Burnard concluded from his investigation that Megan's and Christopher's allegations of sexual assault were credible and that both children appeared to have suffered severe emotional trauma as a result.

Smith also met with the children subsequent to his initial September 8, 1993 interview.[3] During these interviews, Christopher told Smith that he too had been tied to a tree at the same time as

[3] These subsequent interviews formed the basis for the specific incidents listed in the affidavit of probable cause. The affidavit was presented in support of Whitmore's arrest warrant and search warrant.

his sister.[4] Christopher stated that he was forced to perform oral sex on the juveniles and they forced him to put his penis in his sister's mouth. Three of the juveniles also attempted to perform anal intercourse on him. Both Christopher and Megan stated that Plaintiff Whitmore was present when these acts occurred, forced the Bell children to perform oral sex on him, supplied the juveniles with alcohol, and tried to get the Bell children to consume alcohol. In addition, Megan and Christopher alleged that four of the juveniles were in possession of a .22 caliber handgun, a .22 caliber rifle, and a shotgun, all of which were supplied by Plaintiff Whitmore. Both Megan and Christopher stated that Plaintiff Whitmore had a black and gray instant camera and a 35 millimeter disposable camera and took pictures while the juveniles were sexually assaulting the Bells. Plaintiff Whitmore also had one of the juveniles, William Wilson, take pictures while the Bell children performed oral sex on him. The children were threatened with death or serious bodily harm if they told anyone about these events. In addition, Megan alleged that on the day prior to the tree incident, Plaintiff Whitmore had taken her to his trailer where he forced Megan to perform oral sex on him and took sexually suggestive pictures of her. Megan was able to provide a substantial number of details about the inside of Whitmore's trailer. Def. App. at 380-81 (Coyle Dep.).

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[4] Christopher did not reveal to Smith that he had been a victim of sexual assault until Smith's third interview with him, and did not state that Plaintiff Whitmore was present during these acts until Smith's fourth interview.

After Smith discussed these allegations with Burnard and Assistant District Attorney Coyle, Smith and Coyle determined that probable cause existed to arrest Plaintiff Whitmore and search his trailer.[5] The search warrant, which sought, inter alia, the two cameras and three firearms described by the Bell children, as well as any pictures or negatives depicting sexual activities, was signed by a District Justice on September 16, 1993. Plaintiff was arrested that same day, and his trailer was searched. The police did not find any incriminating pictures or the cameras and firearms described in the warrant. Smith did take two cameras and two firearms that Plaintiff Whitmore voluntarily gave to him. Whitmore was taken to Northampton County Prison, where he remained until November 2, 1993, at which time he posted bail. While in prison, he was beaten by one inmate and threatened with death by another. He also lost his job soon after being imprisoned.

A juvenile adjudication hearing was held on October 18 and 19, 1993 for four of the juveniles arrested. Christopher was the primary witness for the Commonwealth. After hearing the testimony of Dr. Decker and Christopher, Judge William F. Moran dismissed the charges against the juveniles, finding that the juveniles did not commit the delinquent acts. Based on the testimony elicited during

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[5] Coyle spoke with Burnard about his findings prior to the application for the arrest and search warrants. Id. at 383. Coyle also interviewed the Bell children on numerous occasions, including at least one interview of Megan before Plaintiff Whitmore was arrested. Id. at 357, 369-70 (Coyle Dep.). In addition, she interviewed Mucklin before Plaintiff Whitmore's arrest. Id. at 373. Mucklin gave Coyle "significant reason to believe he was present" during the tree incident. Id. at 372.

the juvenile adjudication, Coyle recommended to Mr. and Mrs. Bell that the charges against Plaintiff Whitmore be dropped. After further discussions with the Bells and the District Attorney's Office, the charges against Plaintiff Whitmore were dropped on November 18, 1993.

III. SUMMARY JUDGMENT STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if there is sufficient evidence with which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" only if it might affect the outcome of the case. Id. Any dispute over irrelevant or unnecessary facts will not preclude a grant of summary judgment. Connors v. Fawn Mining Corp., 30 F.3d 483, 489 (3d Cir. 1994), citing Anderson, 477 U.S. at 248.

When considering a motion for summary judgment, the court must draw all justifiable inferences in favor of the non-moving party. Anderson, 477 U.S. at 255 (citation omitted). The moving party bears the burden of "'showing' -- that is, pointing out to the district court -- that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S.

317, 325 (1986). Summary judgment should be directed "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322. "The mere existence of a scintilla of evidence in support of the plaintiff's position" is insufficient to defeat a motion for summary judgment. Anderson, 477 U.S. at 252.

IV. DISCUSSION

Defendants have moved for summary judgment on the ground that Smith had probable cause to arrest Whitmore and search his trailer. Even if Smith did not have probable cause, Defendants argue, he should be entitled to qualified immunity. In addition, Defendants assert that no evidence has been presented from which a reasonable jury could conclude that the Township had a custom or policy that directly led to a violation of Whitmore's constitutional rights.

Whitmore contends that Smith omitted pertinent information in his affidavit of probable cause, conducted a sub-standard investigation, and worked in a Township police department that was rife with mismanagement. As such, Whitmore argues, issues of material fact are present as to whether probable cause existed. Because no reasonable jury could conclude that probable cause was absent in this case, the court need not address Smith's qualified immunity argument.[6]

[6] If, however, this court has incorrectly decided the probable cause issue, the court finds that Smith is entitled to

A. PROBABLE CAUSE

Whitmore asserts that he was falsely arrested because probable cause was not present. An arrest made with probable cause, however, is an absolute bar to a section 1983 action for false arrest. Ortega v. Christian, 85 F.3d 1521, 1525 (11th Cir. 1996) (citation omitted). Probable cause to justify an arrest exists when there are "facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing in the circumstances shown, that the suspect has committed . . . an offense." Michigan v. DeFillipo, 443 U.S. 31, 37 (1979) (citations omitted). "In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Brinegar v. United States, 338 U.S. 160, 175 (1949).

"Typically, the existence of probable cause in a section 1983 action is a question of fact. The district court may conclude in the appropriate case, however, that probable cause did exist as a matter of law if the evidence, viewed most favorably to Plaintiff, reasonably would not support a contrary factual finding." Sherwood v. Mulvihill, 113 F.3d 396, 401 (3d Cir. 1997) (internal citations and footnote omitted).

Whitmore essentially makes two arguments to support his claim

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qualified immunity since a reasonable officer in his position could conclude that there was probable cause to arrest Whitmore.

that a genuine issue of material facts exists. He first alleges that Smith's affidavit in support of the warrants failed to contain pertinent information that was relevant to the probable cause determination. Next, Whitmore argues that Smith's investigation was so flawed that the evidence he did have was unreliable, thereby throwing into doubt any probable cause finding.

1. MATERIAL OMISSIONS

Whitmore claims he was falsely arrested because Smith omitted material information when applying for the arrest and search warrants. In other words, Whitmore argues that the District Justice did not have the complete story when deciding whether to grant Smith's probable cause application. Whitmore points out that the probable cause affidavit only described what the Bell children said in their last few interviews, without explaining that the children gave different accounts in their initial interviews. For instance, in the first interview with Christopher (which was audiotaped), there was no mention of any adult being present, no mention of alcohol, cameras, anal sex, or of Christopher being forced to participate in oral sex with his sister, Whitmore, or the juveniles. See Pltf. Opp. at 10. According to Christopher's first statement, he was not even present during the tree incident; rather, he was told about it by one of the juveniles. The probable cause affidavit also did not mention that Mucklin, a supposed witness, did not recount any assault of Christopher, any incident involving Plaintiff Whitmore, or seeing Megan sexually assaulted

while she was tied to a tree.[7]

A section 1983 plaintiff challenging the validity of a warrant based on an alleged affirmative misrepresentation or a material omission "must prove by a preponderance of the evidence, (1) that the affiant knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant; and (2) that such statements or omissions are material, or necessary, to the finding of probable cause." Sherwood, 113 F.3d at 399. Proof of negligence or innocent mistake in preparing the affidavit is insufficient to establish liability. Lippay v. Christos, 996 F.2d 1490, 1501 (3d Cir. 1993) (citation omitted). Reckless disregard for the truth requires that the affiant made the statements in the affidavits "with [a] high degree of awareness of their probable falsity." Id., quoting, Garrison v. Louisiana, 379 U.S. 64, 74 (1964). To date, Whitmore has not adduced any evidence that Smith made deliberate affirmative falsehoods in his affidavit or had a

[7] Whitmore also claims that Smith's report contains material that is at odds with Mucklin's tape recorded interview. In this interview, Mucklin denies being threatened by Paolini during a separate incident when Megan was allegedly assaulted in 1992, See Pltf. Opp. at 7-8, while Smith's report says that Paolini threatened to choke Christopher and Mucklin to death if they told anyone. See Def. App. at 1. Although there is a discrepancy in Smith's report, it does not involve an incident that is the subject of the probable cause affidavit so it could not have formed the basis for Whitmore's arrest. The only other evidence Whitmore has presented to attack Smith's credibility -- that he was suspended once for running an unauthorized criminal history check and that he engaged in extra-marital affairs while on the job -- is not related to the manner in which he conducted the investigation in this case.

high degree of awareness that his statements were false.

"Recklessness may [also] be inferred from omission of facts which are 'clearly critical' to a finding of probable cause." DeLoach v. Bevers, 922 F.2d 618, 622 (10th Cir. 1990), quoting, Hale v. Fish, 899 F.2d 390, 400 (5th Cir. 1990). Thus, the court must determine if a genuine issue of material fact exists as to whether the omissions discussed above would be clearly critical to a probable cause determination. See Sherwood, 113 F.3d at 400 (court supplies omitted facts to the affidavit to determine if probable cause exists).

While the Bell children's initial statements did not identify Plaintiff Whitmore as the perpetrator of any crimes, the statements did provide Smith with enough detail to conclude that further investigation was warranted. He enlisted the assistance of Burnard, who had extensive experience interviewing child witnesses in abuse cases.[8] Burnard testified in his deposition, without contradiction, that it is not unusual for children to provide more information about an abuse incident in subsequent interviews, once the interviewer earns the child's trust. Def. App. at 313-15. It is especially difficult to get young boys to open up about sexual

[8] As a caseworker in Northampton County, Burnard had investigated child abuse cases for nearly four years prior to this incident. Prior to working in Northampton, Burnard served as a caseworker in Bucks County for five years investigating sexual, physical, and emotional child abuse cases. Def. App. at 226-28 (Burnard Dep.). He also had occasion to conduct child abuse investigations as a child protective service treatment worker before working for Bucks County. Id. at 219, 225. Burnard has investigated hundreds of sexual abuse cases in his career. Id. at 311.

abuse inflicted by males because of the stigma attached. Id. at 237-38 (Burnard Dep.). It became apparent to Burnard during his first interview of Christopher that Christopher was holding something back and that further interviews were needed. Id. at 319.

Furthermore, it is unsurprising that the Bell children did not initially relate the full scope of the assaults because both were threatened with serious bodily harm if they told anyone. The details of the assault, including Plaintiff Whitmore's participation, emerged over the course of the interviews with Burnard and Smith.[9] In addition, Megan was able to give a detailed description of the inside of Whitmore's trailer, which lent credence to her claim that she had been sexually assaulted while inside the trailer. See Myers v. Morris, 810 F.2d 1437, 1456 (8th Cir. 1987) ("These accounts were not hearsay or anonymous tips, but were detailed descriptions of criminal activity by suspected victim-eyewitnesses whose names and ages were known to the deputies and were provided to the judicial officers who also found probable cause."). Burnard concluded that both Christopher and Megan were credible and had suffered sexual assaults.

Mucklin's claim that he was not with Christopher during the

[9] Whitmore does not argue that Burnard or Smith misrepresented what the children told them in the later interviews, that Smith or the children tried to frame Whitmore for these assaults, or that Smith believed that the children were lying. The only evidence that Whitmore has to impeach these interviews is that the children did not provide a full description of the events in their initial meetings with Smith and Burnard.

tree incident is not sufficient to vitiate probable cause since third party eyewitness accounts are not required for there to be probable cause.[10] Rather, the court "must consider the inconsistencies that [plaintiff] points out in light of all of the circumstances of which the arresting officers were aware at the time of his arrest[.]" Brodnicki v. City of Omaha, 75 F.3d 1261, 1265 (8th Cir. 1996). These circumstances included medical evidence that Megan had been sexually assaulted. Dr. Decker found sores in Megan's mouth and evidence of insertion in her vagina. These findings were consistent with the nature of the sexual assaults Megan and Christopher said she was subjected to -- performing oral sex and enduring digital penetration.[11] Furthermore, Megan exhibited behavioral changes during the time period at issue, which could be another sign that she had been sexually abused. See Aff. of Beth Bell, paras. 3,6; Def. App. at 289-90 (Burnard Dep.).

Both Christopher and Megan also had physical reactions during the time period they were interviewed about the assaults -- Megan becoming extremely upset after seeing the penis of an anatomically correct adult male doll, and Christopher needing to come home from

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[10] It should also be noted that both Burnard and Coyle felt that Mucklin was not telling them all he knew about the sexual assaults. See Def. App. at 323-24, 372-73 (Burnard & Coyle Deps.).

[11] Although Dr. Decker's examination of Christopher occurred after Plaintiff Whitmore was arrested and thus was not relied on by Smith when making the probable cause determination, Decker found that there was physical evidence to support Christopher's claims of anal penetration.

school on two consecutive days. Before seeking the arrest and search warrants, Smith consulted with Coyle, an attorney, and they determined that they had probable cause to arrest Plaintiff Whitmore.

Given these facts, Smith had ample probable cause to conclude that Plaintiff Whitmore participated in the sexual assault of the children. As a result, the alleged omissions in Smith's affidavit did not affect the finding that probable cause existed to arrest Whitmore. See Easton v. City of Boulder, Colo., 776 F.2d 1441, 1451 (10th Cir. 1985) ("[B]ecause the evidence excluded [from the affidavit] in no way alters the fact that the evidence included states probable cause, the warrant was valid[.]"). Consequently, Smith was not reckless in omitting these details. No reasonable jury could conclude otherwise.

2. METHOD OF INVESTIGATION

Although it is not entirely clear from Whitmore's submissions to the court, he appears to argue that Smith lacked probable cause due to his failure "to fulfill the requirements of due diligence, prudency and reasonableness in this segment of the investigation prior to arresting the plaintiff." Def. App. at 506 (Pltf.'s Expt. Rept.). Whitmore, through his expert, cites a litany of alleged shortcomings in Smith's investigation. These include, inter alia, that Smith:

(1) failed to interview Whitmore to determine his whereabouts during the alleged assaults;

(2) did not tape-record subsequent interviews with the children;

(3) engaged in egregious instances of leading questions in those interviews that were taped;

(4) did not investigate whether the abuse could have been committed by a member of the Bell family; and

(5) failed to corroborate the statements of the two young children.

Whitmore also asserts that during the October 18, 1993 juvenile adjudication, Christopher made a number of statements that were inconsistent with the probable cause affidavit. Each of these claims will be addressed in turn.

(1) Since the dates and times of the assaults were not clearly established, interviewing Whitmore to determine his whereabouts at a particular time would have almost no probative value. (2) It is true that neither Smith nor Burnard taped their subsequent interviews with the children. However, Whitmore has not produced any evidence to suggest that the taping of children's interviews was standard practice in September 1993, the time in which these interviews occurred. In fact, Coyle testified during her deposition that she did not think it was normal police procedure to tape interviews of witnesses at that time. Def. App. at 370-71.

(3) While Whitmore claims that Smith's taped interviews included leading questions and improper interviewing techniques, he has failed to point to a single specific example to support his claim. Moreover, once Smith learned of the serious nature of the allegations, he did not rely only on his own interviews, but rather called upon Burnard, a very experienced child abuse investigator to

assist in the investigation. There have been no allegations that Burnard was an incompetent interviewer, and Burnard found the children to be credible. (4) Whitmore has not provided any evidence that Smith failed to consider Mr. and Mrs. Bell as possible suspects. Rather, the record demonstrates that Smith took into account the possibility of internal family abuse. Smith testified that he interviewed the children about this issue and that he, Burnard, and Coyle felt satisfied that the abuse was not coming from within the family. Def. App. at 148 (Smith Dep.). While Burnard did not specifically interview Mr. and Mrs. Bell, he still looked for "anything [he] could pick up on" when interviewing the Bell children. Id. at 307-08 (Burnard Dep.). In addition, Whitmore has not pointed to any evidence that would have given Smith reason to believe that the family was involved in the abuse.

(5) Although Whitmore asserts that Smith failed to obtain corroborative evidence before arresting him, both Smith and Burnard were aware that the children were behaving in a manner that was consistent with that of someone who had been abused. Furthermore, Megan's medical examination revealed that she had been sexually assaulted in the manner in which she described. In any event, a single witness' statement can support an arrest warrant. Gramenos v. Jewel Companies, Inc., 797 F.2d 432, 439 (7th Cir. 1986). Here, there were statements from two different eyewitnesses. The fact that children were the eyewitnesses in this case does not make

their statements inherently suspect. Myers, 810 F.2d at 1456-57.[12] Finally, Whitmore's assertion that Christopher made inconsistent statements during the juvenile adjudication is of no relevance in determining whether there was probable cause to arrest Plaintiff Whitmore because the juvenile adjudication occurred after Plaintiff Whitmore's arrest.

Whitmore's expert cites other alleged shortcomings in Smith's investigation which at most amount to negligence on Smith's part. In any investigation, there are always additional leads that an officer could have followed that might have turned up contrary evidence. Hindsight is 20/20. An officer is not required to conduct a mini-trial before arresting a defendant. Brodnicki, 75 F.3d at 1264 (citation omitted).

> Therefore, whether the officers conducted the investigation negligently is not a material fact. Indeed, for Fourth Amendment purposes, the issue is not whether the information on which police officers base their request for an arrest warrant resulted from a professionally executed investigation; rather, the issue is whether that information would warrant a reasonable person to believe that an offense has been committed . . . by the person to be arrested.

Orsatti v. New Jersey State Police, 71 F.3d 480, 484 (3d Cir. 1995). Smith has demonstrated that he had probable cause to arrest Whitmore at the time he applied for the warrants. While it is

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[12] See also Huffaker v. Bucks County DA's Office, 758 F. Supp. 287, 291 (E.D. Pa. 1991) ("To suggest seriously that persons with mental disabilities should not be believed about what is done to them in the absence of impartial eyewitnesses is to open the door to the abuse of some of our most vulnerable citizens."). This rationale is equally compelling when an officer investigates allegations made by children.

unfortunate that Whitmore had to endure the humiliation and collateral consequences of being arrested, "[t]he Constitution does not guarantee that only the guilty will be arrested." Baker v. McCollan, 443 U.S. 137, 145 (1979). Defendants are entitled to summary judgment on Whitmore's false arrest claim.

B. ILLEGAL SEARCH

Whitmore's complaint also alleges that Smith conducted a search of his home without probable cause on the day he was arrested. "Probable cause exists to support the issuance of a search warrant if, based on a totality of the circumstances, 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" Sherwood, 113 F.3d at 401, quoting, Illinois v. Gates, 462 U.S. 213, 238 (1983). As discussed in the previous section, Smith had probable cause to arrest Whitmore. Smith also had detailed descriptions of the type of cameras used to take pictures of the Bell children and the type of firearms that were involved in the assault. Megan had also stated that Whitmore had sexually assaulted her in his trailer and taken sexually suggestive pictures of her while she was there. Given this information, there was a fair probability that evidence of these assaults would be found in Whitmore's trailer. Since no reasonable jury could find that the search of the trailer was conducted without probable cause, Defendants are entitled to

summary judgment on Whitmore's illegal search claim.[13]

C. TOWNSHIP LIABILITY

Whitmore attempts to paint a picture of the Township's police department as one in complete and utter disarray, with officers lacking both proper supervision and standard operating procedures. The court need not inquire into the veracity of these claims, however, because Smith had probable cause to arrest Whitmore. As such, there can be no liability against the Township. See City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986) (municipality may not be held liable when there is no underlying constitutional violation by its officers).

Moreover, Whitmore's claim against the Township fails because he has not set forth any evidence demonstrating (1) that the Township's actions were taken with the requisite degree of culpability and (2) the nexus between the Township's actions and the deprivation of federal rights allegedly suffered by Whitmore. See Board of County Commissioners v. Brown, -- S.Ct. --, 1997 WL 201995, at *5 (U.S. Apr. 28, 1997). Therefore, the Township cannot be held liable under 42 U.S.C. § 1983.

V. CONCLUSION

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[13] Similarly, Whitmore's false imprisonment claim fails because there was probable cause to arrest Whitmore. See Groman v. Township of Manalapan, 47 F.3d 628, 636 (3d Cir. 1995) ("The [Supreme] Court in [Baker v. McCollan, 443 U.S. 137 (1979)] made it clear an arrest based on probable cause could not become the source of a claim for false imprisonment.") (citation omitted).

For the foregoing reasons, Defendants' summary judgment motion is granted. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EARL F. WHITMORE, Plaintiff,	:	
v.	:	**CIVIL ACTION NO. 96-2745**
DENNIS J. SMITH, and UPPER MT. BETHEL TOWNSHIP Defendants.	:	

O R D E R

AND NOW, this _____ day of July, 1997, upon consideration of Defendants' Motion for Summary Judgment and Plaintiff's Opposition thereto, it is HEREBY ORDERED that Defendants' Motion for Summary Judgment is GRANTED. Judgment is entered for Defendants and against Plaintiff on all counts of Plaintiff's complaint. The Clerk of the Court is directed to close the docket of the within case for statistical purposes.

BY THE COURT:

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EDWARD N. CAHN, Chief Judge