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

ALBERT MATASAVAGE,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 3:CV-98-2105
vs.	:	
	:	(JUDGE CAPUTO)
DAN CORBY,	:	
MIKE DOUGHERTY, and	:	
PAUL CAVISTON,	:	
	:	
Defendants.	:	

MEMORANDUM

Presently before the Court is the Motion for Judgment on the Pleadings, or Any Alternative, Summary Judgment of Defendant, Dan Corby. (Doc. 18.) The Motion will be granted consistent with the reasoning below.

I. BACKGROUND

On December 29, 1997, an individual forcibly pushed Karen Burnside, a church employee, from a chair at the Holy Rosary (the "Church") Rectory in Scranton, Pennsylvania and stole a cash box containing more than $14,000 in "Smart Money" or cash value certificates ("Certificates") which are redeemable at local stores for merchandise. (Pl.'s Comp., Doc. 1 ¶ 5.) Defendant Dan Corby, a police officer with the Scranton Police Department for 29 years, was assigned to investigate the Church robbery. (Mr. Matasavage's Statement of the Undisputed Material Facts in Opp'n to the Def. Dan Corby's Mot. for Summ. J.,

Dep. of Daniel M. Corby, Doc. 23, Ex. B at 4-5.) Dan Corby was assisted in the Church investigation by Detectives Mike Dougherty and Paul Caviston. (Dep. of Mike Dougherty, Doc. 23 Ex. D at 4-5; Dep. of Paul Caviston, Doc. 23 Ex. C at 5.) Burnside provided Defendant with a detailed description of the individual who had robbed the Church. (Dep. Test. of Karen Burnside, Doc. 23 Ex. F at 8.) Defendant prepared a photo array containing photographs of persons who matched the description of the individual who had robbed the Church. (Doc. 23 Ex. B at 8-9.) Burnside was unable to identify any persons from the photo array presented by Defendant. (Doc. 23 Ex. B at 8-9.)

Monsignor Joseph Kelly, pastor at the Church on December 29, 1997, informed the Scranton Police Department that the Church rectory had been contacted by persons who indicated that Plaintiff Albert Matasavage may have been the individual who robbed the Church. (Dep. of Monsignor Joseph Kelly, Doc. 23 Ex. E at 8-10.) Thereafter, Defendant prepared a second photo array which included Plaintiff's picture and presented the array to Burnside. (Doc. 23 Ex. B at 9.) Burnside identified Plaintiff as the individual who resembled the Church robber and indicated that the person who robbed the Church was clean-shaven whereas Plaintiff's picture in the photo array was not clean-shaven. (Doc. 23 ¶ 12.) Based on Burnside's identification of Plaintiff, Defendant prepared an arrest warrant and Affidavit of Probable Cause for the arrest of Plaintiff. (Doc. 23 ¶ 2 & Aff. of Probable Cause, Doc. 23 Ex. A.) On December 31, 1997, District Justice James Kennedy issued an Arrest Warrant and

Defendant then arrested Plaintiff on January 1, 1998. (Doc. 1 ¶¶ 12-13; Doc. 23 ¶¶ 4-5.)

Subsequently, a further investigation into the Church robbery revealed that other individuals may have been involved. (Doc. 23 Ex. B at 15.) A search warrant was issued to investigate another individual, Nicholas Fazio, to determine whether he possessed the Certificates. (Doc. 1 ¶ 17; Doc. 23 Ex. C at 8-10.) A search of Mr. Fazio's residence produced evidence which implicated Mr. Fazio. (Doc. 23 Ex. C at 10.) The search occurred one day prior to Plaintiff's Preliminary Hearing. (Doc. 23 Ex. C at 10.) The search of Mr. Fazio's residence produced evidence indicating Plaintiff may not have been involved in the robbery. (Doc. 23 Ex. B at 15-16.) The District Attorney's Office was informed of the new evidence and released Plaintiff the following morning prior to his Preliminary Hearing. (Doc. 23 Ex. C at 10.) The Lackawanna County District Attorney's Office withdrew the Criminal Complaint against Plaintiff on or about February 2, 1998. (Doc. 1 ¶ 18.)

On December 29, 1998, Plaintiff filed a complaint with this court alleging a violation of his civil rights pursuant to 42 U.S.C. § 1983 and also for malicious prosecution, false arrest, false imprisonment and infliction of emotional distress premised upon Pennsylvania law against Defendants Dan Corby, Mike Dougherty and Paul Caviston. (Doc. 1 ¶¶ 22 & 28.) Defendants filed their answer on March 5, 1999. (Doc. 4.) On June 30, 1999, Defendants filed motions requesting judgment on the pleadings, or any alternative, summary judgment

based on the fact that the evidence and testimony rendered failed to set forth a claim against Defendants upon which relief can be granted to Plaintiff. (Docs. 17 & 18.) On August 11, 2000, this Court granted summary judgment in favor of Michael Dougherty and Paul Caviston and against Plaintiff. (Doc. 28.)

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) provides that the moving party is entitled to summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. A fact is "material" if proof of its existence or non-existence might affect the outcome of the suit under the applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). "Facts that could alter the outcome are material facts." Charlton v. Paramus Bd. of Educ., 25 F.3d 194, 197 (3d Cir. 1994), cert. denied, 115 S.Ct. 590 (1994). "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248, 106 S.Ct. at 2510.

Initially, the moving party must show the absence of a genuine issue concerning any material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 329, 106 S.Ct. 2548, 2556, 91 L.Ed.2d 265 (1986). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party, and

the entire record must be examined in the light most favorable to the nonmoving party. White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988); Continental Ins. Co. v. Bodie, 682 F.2d 436, 438 (3d Cir. 1982). Once the moving party has satisfied its burden, the nonmoving party "must present affirmative evidence to defeat a properly supported motion for summary judgment." Anderson, 477 U.S. at 256-57, 106 S.Ct. at 2514. Mere conclusory allegations or denials taken from the pleadings are insufficient to withstand a motion for summary judgment once the moving party has presented evidentiary materials. Schoch v. First Fidelity Bancorporation, 912 F.2d 654, 657 (3d Cir. 1990). Rule 56 requires the entry of summary judgment, after adequate time for discovery, where a party "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." Celotex, 477 U.S. at 322, 106 S.Ct. at 2552. "The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323, 106 S.Ct. at 2552.

III. DISCUSSION

A. Count I: Plaintiff's Claim under 42 U.S.C. § 1983

Plaintiff brings a claim pursuant to 42 U.S.C. § 1983 alleging that Defendant violated his procedural due process rights and his right to be free from unreasonable seizures pursuant to the Fourth and Fifth Amendments

through the Fourteenth Amendment of the U.S. Constitution. (Doc. 1 ¶ 24.) Plaintiff contends that there was no probable cause to support the warrant for his arrest. As support, Plaintiff argues that the Probable Cause Affidavit contained material misrepresentations and omissions made by Defendant. Defendant, on the other hand, contends that he did have probable cause to arrest Plaintiff and that he is entitled to qualified immunity. I hold that Defendant did have probable cause to support the Arrest Warrant and will grant summary judgment to Defendant for Count I.

1. Reckless Disregard for the Truth

In order to prevail under § 1983, Plaintiff must show 1) Defendant engaged in conduct under the color of state law; and 2) Defendant's conduct deprived Plaintiff of rights, privileges, or immunities protected by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535, 101 S.Ct. 1908, 1913 (1981). Since Plaintiff contends Defendant did not provide probable cause for the arrest warrant, thereby violating his rights under the Fourth Amendment, Plaintiff must show by a preponderance of the evidence (1) that the police officer "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 [were] material, or necessary, to the finding of probable cause." Wilson v. Russo, 212 F.3d 781, 786 (3d Cir. 2000).

Plaintiff must provide sufficient evidence for a reasonable jury to conclude

Defendant made statements or omissions that he "knew [were] false, or would have known [were] false except for his reckless disregard for the truth." United States v. Leon, 468 U.S. 897, 923, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984); cf. Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). In Wilson, the Third Circuit acknowledged that a reckless disregard for the truth means different things when dealing with omissions and assertions, and explained the different methodologies for analyzing each. 121 F.3d at 787. If the court determines there were material omissions and assertions, the court will correct the warrant by inserting the omissions and excising the offending misstatements and then analyze the "corrected" warrant for probable cause. Sherwood v. Mulvihill, 113 F.3d 396, 399 (3d Cir. 1997).

a. Omissions

In the instant matter, the Affidavit of Probable Cause was based upon the identification of Plaintiff by Burnside. (Doc. 23, Ex. A.) Plaintiff claims that Burnside had described the perpetrator as clean-shaven whereas the photo array did not portray Plaintiff as clean-shaven. (Doc. 23 ¶ 12.) Plaintiff also argues that Defendant withheld information of what Plaintiff characterizes as an exculpatory videotape and failed to disclose such information to Justice Kelly in the probable cause affidavit. (Doc. 23 ¶¶ 15-18.)

With regard to omissions, the Third Circuit followed the Eighth Circuit's approach, holding omissions are made with reckless disregard if an officer withholds a fact within his knowledge that "[a]ny reasonable person would have

known that this was the kind of thing the judge would wish to know." Wilson, 212 F.3d at 788 (quoting United States v. Jacobs, 986 F.2d 1231, 1235 (8th Cir.1993)). The omitted information must be of a highly relevant nature for the omission to occur with reckless disregard upon the affidavit. Id.

Applying the test to this case, to wit, is a photo array which shows the individual as unshaven when a witness describes him as clean-shaven information which a judge would wish to know. In some instances, facial growth may be important as a component in the description of a perpetrator or as a factor which may prove prejudicial and therefore important if all the photos in a photo array included unshaven individuals whereas the photo of the perpetrator was clean-shaven.

Although Burnside described the perpetrator as clean-shaven, the photo array which Burnside was shown depicted six individuals who were all unshaven. The photo array was not prejudicial. It should be noted that a photo from a photo array will not always accurately depict the facial growth of an individual at every given moment. An officer cannot be expected to communicate every slight variation in appearance from a photo array. See Wilson, 212 F.3d at 788. In this case, since the issue of facial growth in the photo array does not prove to be important or prejudicial (requiring Defendant to qualify Plaintiff's appearance to include Plaintiff's facial growth) it is not something a judge would expect from a police officer.

I turn to the issue of Defendant's failure to disclose what Plaintiff

characterizes as an exculpatory videotape to Justice Kelly. (Doc. 23 ¶¶ 15-16.) A truly exculpatory videotape would, of course, be information that would be important for the judge to know. Plaintiff offers police records which show that Defendant received a videotape from Patrolman Ray Kelly who was investigating the robbery. (R. of Patrolman Ray Kelly, Doc. 23 Ex. G.) According to Plaintiff, the videotape shows the actual person who had committed the offense, attempting to cash-in part of the stolen property. (Doc. 23 ¶ 15.) However, no evidence was produced by either party as to what the videotape actually showed. Nonetheless, in viewing the facts in the light most favorable to Plaintiff, such information would be important for the judge to know.

b. Assertions

Plaintiff attacks the identification made by Burnside, contending that her identification was not a "positive" one. (Pl. Br. in Opp'n to Def. Dan Corby's Mot. for Summ. J., Doc. 25 at 13.) Plaintiff argues that if the issuing authority had been informed that Burnside was not "100% sure", the warrant would not have been granted. (Doc. 25 at 13.)

Assertions can be made with reckless disregard for the truth even if they involve minor details--recklessness is determined not by the relevancy of the information; rather it is determined by the officer's willingness to affirmatively distort the truth. Wilson, 121 F.3d at 788. Borrowing from free speech jurisprudence, the Third Circuit held in Wilson that reckless disregard for the truth is equal to a high degree of awareness of probable falsity in the

statements. Id.; see also United States v. Clapp, 46 F.3d 795, 800 (8th Cir. 1995). An assertion is made with reckless disregard when "viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported." Clapp, 46 F.3d at 801 n. 6.

There is a dispute as to the facts of Burnside's identification. Deposition testimony from Burnside and Monsignor Kelly show that Burnside only said Plaintiff looked "familiar" whereas Defendant Corby testified Burnside identified Plaintiff without hesitation. (Doc. 23 Ex. F at 14; Ex. E at 24-25; Doc. 23 Ex. B at 10.) In addition, Plaintiff cites factors that would motivate Defendant to act with intent or reckless disregard to misrepresent the identification or omit important information. He notes that (a) Defendant was a member and usher at the Church; (b) the robbery was a high profile case; and (c) "Defendant Paul Caviston would not have permitted the Defendant Dan Corby to proceed with the arrest of Mr. Matasavage unless there was a positive identification of Mr. Matasavage." (Doc. 25 at 18.)

Viewing all of the evidence available and in a light most favorable to Plaintiff, I disagree that Defendant made his statement with reckless disregard for the truth. First, Plaintiff's contention that Defendant Caviston would not have prosecuted Plaintiff if Defendant Corby had not represented Plaintiff had been positively identified, is misplaced. Defendant Caviston testified in his deposition that he asked Defendant whether Burnside positively identified the person who

robbed the rectory:

> A: I asked was he sure, and he said, yes, that the person said she was positive, at which point I asked Detective Corby to call the D.A.'s office to see if he could get approval on criminal charges, which he did.
> Q: Okay. Is it fair to say that your execution of the probable cause affidavit, your involvement in pursuing charges against Mr. Matasavage were premised upon the positive identification as represented to you by Detective Corby?
> A: Yes. (Doc. 23 Ex. C at 6-7.)

Plaintiff argues that since the statement is true then the negative must also be true. I do not agree. It does not follow that anything less than a "positive" identification would have caused Caviston not to have prosecuted Plaintiff.

In addition, Defendant was provided with Plaintiff's name from numerous phone calls to the Church rectory who identified Plaintiff as the perpetrator. (Doc. 23 Ex. E at 13.) Defendant placed Plaintiff's picture in a photo array and presented that photo array to Burnside. (Doc. 23 Ex. B at 8-9.) Burnside was not familiar with Plaintiff, nor had she ever seen him before, but was still able to identify him. (Doc. 23 Ex. F at 10 & 12-13.) Burnside then signed the back of the photo array with Plaintiff's picture. (Doc. 23 Ex. F at 16.) Furthermore, even though Plaintiff provides the aforementioned factors as motive for Defendant to make a quick arrest, Plaintiff has not provided evidence that Defendant actually entertained serious doubts or acted with reckless disregard as to the truthfulness of the statements.

2. Materiality/Probable Cause

The next step is to assess whether such statements and omissions were

material or necessary towards finding probable cause. Wilson, 212 F.3d at 789; Sherwood, 113 F.3d at 399. The Court will then engage in probable cause analysis by "weighing the inculpatory evidence against any exculpatory evidence available to the officer." Wilson, 212 F.3d at 791. Probable cause is measured by the low standard, requiring only a "fair probability" that the person committed the crime. Id. at 789; see Sherwood, 113 F.3d at 401. "[P]robable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995) (citing United States v. Cruz, 910 F.2d 1072, 1076 (3d Cir.1990)). Courts determine the existence of probable cause using an objective standard. The mindset of the "reasonable officer" and not of the actual arresting officer is taken into account. Berg v. County of Allegheny, 219 F.3d 261, 272 (3d Cir. 2000). Therefore, a police officer will be liable for civil damages for an arrest if "no reasonably competent officer" would conclude that probable cause existed. Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092, 1096, 89 L.Ed.2d 271 (1986).

Plaintiff argues that Burnside's identification was tainted because she did not "positively" identify Plaintiff; she only said he looked "familiar". Such identification, says Plaintiff, would not support probable cause. Viewed in the light most favorable to the nonmoving party, even a "familiar" identification would

support probable cause. "[I]t is established in this Commonwealth that tentative identifications are sufficient even to sustain a conviction… Certainly no more is required for an arrest." Commonwealth v. Miller, 438 A.2d 995, 999, 293 Pa. Super. 281, 289 (1981). In Miller, an eyewitness to a shooting was shown a photo array, but was unable to identify the perpetrator from the array. Id. She was then shown color slides and stated that the plaintiff's picture, "was the only one that looked the most like [the perpetrator] that [she] remember[ed] seeing in the store." Id. The court held that under the facts of the case, a reasonably prudent person would find probable cause. Id. Similarly, Burnside was pushed aside by the perpetrator who stole the Certificates. Burnside later identified Plaintiff, stating "[Plaintiff] was very familiar – well, looked like the man who could have done it; however, I said that the man who came in was clean shaven, and that I couldn't be 100 percent sure." (Doc. 23 Ex. F at 14.)

Plaintiff argues that Nelson v. Mattern, 844 F. Supp. 216 (E.D. Pa. 1994) is directly on point to the facts of this case. In Nelson, the court held that the defendant police officers did not have probable cause to arrest the plaintiffs. The victim identified the plaintiff while the victim was in a police vehicle in an attempt to do a drive-by identification where police activity was already in progress. The victim saw the plaintiff amidst the police activity and stated, "[H]e looks familiar. You're not going to let him go, are you?" Id. at 219. Plaintiff cites the court's language which said, "the ID was merely tentative, and corroborated by little else." Id. at 221.

Plaintiff's reliance on Nelson is strained since Nelson is distinguishable from the facts of this case. Nelson was decided under a Terry v. Ohio analysis for warrantless arrests where officers can only detain a person when they have reasonable suspicion of criminal activity. 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The court held that the defendant police officers did not have reasonable suspicion to stop the plaintiffs. The identification by the victim which was made subsequent to the stop did not provide for probable cause. The Nelson court also analyzed the identification under the defendants' version of the facts and noted that probable cause would have developed during transportation of the defendants to the police station, when defendants admit the stop developed into an arrest. Nelson, 844 F. Supp. at 221. The court held that the identification was merely tentative and corroborated by little else. Id. Therefore, the belief that the probable cause had developed in the police car was objectively unreasonable. Id.

In the case at hand, although the victim also said that Plaintiff looked "familiar," unlike the identification in Nelson, Burnside's identification of Plaintiff took place before the arrest and provided the probable cause. Moreover, Plaintiff's identification was also corroborated by other factors discussed supra.

Plaintiff also contends that the identification was made from information obtained from anonymous informants. Unsubstantiated rumors alone cannot be the basis for probable cause. Spinelli v. United States, 393 U.S. 410, 416, 89 S.Ct. 584, 589, 21 L.Ed.2d 637 (1969). If Defendant based his arrest solely

upon the anonymous informants, Defendant would not have probable cause. However, in this case, once Burnside identified Plaintiff from the photo array, probable cause existed for his arrest.

Plaintiff argues his picture was used even though there was not any evidence of Plaintiff's build or height and weight. (Doc. 23 ¶¶10-11.) Although Plaintiff does not argue it expressly, this Court assumes Plaintiff is claiming a due process violation. Due process rights generally are violated in the case of identification procedures if the identification process was "unnecessarily suggestive" and "created a substantial risk of misidentification." United States v. Emanuele, 51 F.3d 1123, 1128 (3d Cir. 1995); Greene v. City of Philadephia, 1998 WL 254062. *4 (E.D. Pa. 1998). Suggestiveness depends on the size of the array and the manner of presentation and its contents. Greene, 1998 WL 254062. at *4. The photo array was not unduly suggestive since Plaintiff's picture was not singled out by Defendant. Plaintiff challenged the photo array contending Plaintiff was clean-shaven while his photo portrays him as unshaven as well as for the fact that there was no evidence of Plaintiff's build. The photo array included six photos which depicted individuals with similar facial characteristics. Plaintiff has not shown that the array itself was suggestive because of its size or its failure to include photos of physically similar individuals. See Greene, 1998 WL 254062 at *5.

Finally, the court must weigh the inculpatory evidence against any exculpatory evidence available to the officer. Wilson, 212 F.3d at 791. The

strongest inculpatory evidence lies in the identification by Plaintiff. Burnside had an opportunity to view the perpetrator at the scene of the crime. She testified that she clearly saw the person. (Doc. 23 Ex. F at 7.) Since two days had passed between the crime and the identification, Burnside's identification of Plaintiff was not entirely fresh, but would not call her recollection into question. Although Burnside did not express absolute certainty, her identification was bolstered by the information provided by the anonymous informants.

On the other hand, Plaintiff claims that the "exculpatory" video should have been mentioned. As stated above, Plaintiff has not produced any evidence of the content of the video except to state the person on "said videotape was not Mr. Matasavage." (Doc. 23 ¶ 16.) Assuming that it is someone cashing in the Certificates, the videotape would still not compel the exoneration of Plaintiff. Certainly, it is plausible that Plaintiff had co-conspirators or that the Certificates had already changed hands. The videotape is not enough to nullify the probable cause provided by the inculpatory evidence. Therefore, the Court does not consider the failure to include the videotape information as a material omission nor does the existence of the videotape dispel the probable cause that existed after the identification by Burnside. The facts and circumstances within Defendant's knowledge were sufficient to warrant a reasonable person to believe probable cause existed for an arrest.

3. Qualified Immunity

Law enforcement officers acting within their professional capacity are generally immune from trial "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982); Sherwood, 113 F.3d at 399. The Supreme Court in Hunter v. Bryant held that a police officer's reasonable belief as to probable cause will provide an officer with qualified immunity. 502 U.S. 224, 227, 112 S.Ct. 534, 536, 116 L.Ed.2d 589. Qualified immunity insulates the officer from liability under Section 1983 for the arrest of an innocent person if the arrest is based on probable cause. Id. at 228, 112 S.Ct. at 537. The Supreme Court describes probable cause as a predicate for qualified immunity. Id.; Deary v. Three Un-Named Police Officers, 746 F.2d 185, 188 (3d Cir. 1984).

Though the state actor will be denied immunity and held liable under Section 1983 if a reasonable person would have known that the actions in question violated the plaintiff's clearly established constitutional rights, an arrest based on probable cause will completely insulate the officer from § 1983 liability for the arrest of an innocent person. Bryant, 502 U.S. at 227, 112 S.Ct. at 536. Hence a person arrested on probable cause cannot make out a prima facie case under Section 1983. Martinez v. E. J. Korvette, Inc., 477 F.2d 1014, 1016 (3d Cir. 1973)

In short, Defendant's belief that Plaintiff robbed the Church was objectively reasonable as a matter of law, both on the day that he obtained the

warrant and on the day that he executed it. Since I hold that there was probable cause to support the Arrest Warrant, Defendant is entitled to qualified immunity. Defendant Corby is therefore entitled to summary judgment on Plaintiff's Section 1983 claim.

B. Count II: State Law Claims

This Court has no independent basis of federal jurisdiction over Defendant Corby to hear Plaintiff's state claims of malicious prosecution, false arrest, false imprisonment and infliction of emotional distress as an independent matter. However, Section 1367(a) permits federal courts to decide state-law claims that would not otherwise be subject to federal jurisdiction so long as those claims "are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a) (West 2000).

The Supreme Court has held that federal courts have the power to hear state law claims that "derive from a common nucleus of operative fact" with federal claims. United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 725, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966). When the court disposes of the federal claims, the court has discretion to retain jurisdiction of the state law claims. The court should take into account "generally accepted principles of judicial economy, convenience, and fairness to the litigants." Growth Horizons, Inc. v. Delaware County, Pa, 983 F.2d 1277, 1284 (3d Cir. 1993).

The Court will exercise supplemental jurisdiction over Plaintiff's state law claims because Defendant's actions form part of the same case or controversy and it would be expected that all of the claims would be tried in one judicial proceeding. However, this will lead to the inevitable dismissal of Plaintiff's claims for malicious prosecution, false arrest, false imprisonment, and infliction of emotional distress.

1. Malicious Prosecution/False Arrest/False Imprisonment

Probable cause is defined under state law just as it is under federal law. Commonwealth v. Gayle, 449 Pa.Super. 247, 673 A.2d 927, 931 n. 9 (Pa.Super.Ct.1996). As already stated, Defendant had probable cause to obtain the warrant and to make the arrest. Since probable cause is a necessary element to a malicious prosecution cause of action, the malicious prosecution claim must fail. Roberts v. Toal, 1997 WL 83748, at *17 (E.D. Pa. 1997).

In addition, an arrest under a judicially issued arrest warrant cannot give rise to a false arrest or false imprisonment claim. To prove false arrest and false imprisonment, Plaintiff must show that the arrest warrant was facially invalid and there was no probable cause. Id. at *19. As already discussed, the issuance of the warrant was supported by probable cause; Plaintiff has not established a cause of action for either false arrest or false imprisonment. Defendant Corby is entitled to summary judgment on malicious prosecution, false arrest, and false imprisonment.

2. Infliction of Emotional Distress

Plaintiff did not indicate whether he was pursuing a cause of action for intentional or negligent infliction of emotional distress. Regardless, Plaintiff's claim under either theory will fail. Under Pennsylvania law, there is insufficient evidence to establish a claim for intentional infliction of emotional distress. Intentional infliction of emotional distress is defined as follows:

> One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm. Hoy v. Angelone, 554 Pa. 134, 720 A.2d 745, 753 (1998) (quoting Restatement (Second) of Torts § 46). "[C]ourts have been chary to allow recovery for a claim of intentional infliction of emotional distress. Only if conduct which is extreme or clearly outrageous is established will a claim be proven." Id. 720 A.2d at 753-54.

Plaintiff has failed to allege extreme or clearly outrageous conduct on the part of Defendant since Defendant did not violate any of Plaintiff's constitutional rights.

Under a theory of negligent infliction of emotional distress, Pennsylvania law allows a plaintiff who suffers severe emotional injury caused by the negligence of another to recover damages where the emotional injury is accompanied by physical impact or injury. Roberts, 1997 WL 83748 at *17. Plaintiff has not submitted any medical evidence of physical injuries or any mental distress. Moreover, this Court found that Defendant acted reasonably under the circumstances, therefore, a claim under negligent infliction of emotional distress will fail.

IV. CONCLUSION

In conclusion, Defendant Corby's Motion for Summary Judgment will be granted for both Counts I and II.

An appropriate Order follows.

Dated: October 13, 2000

A. Richard Caputo
United States District Judge

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

ALBERT MATASAVAGE,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 3:CV-98-2105
vs.	:	
	:	(JUDGE CAPUTO)
DAN CORBY,	:	
MIKE DOUGHERTY, and	:	
PAUL CAVISTON,	:	
	:	
Defendants.	:	

ORDER

NOW, this 13th day of October, 2000, it is hereby **ORDERED** that the Motion for Judgment on the Pleadings, Or Any Alternative, Summary Judgment of Defendant Dan Corby (Doc. 18) is **GRANTED**. The Clerk of Court is directed to enter judgment accordingly.

A. Richard Caputo
United States District Judge

Filed 10/16/2000