C.A. No. 05-56125

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARGARET JOHN,

Plaintiff and Appellee,

vs.

ERIC YOUNGQUIST,

Defendant and Appellant.

On Appeal From The United States District Court
For The Central District of California
The Honorable A. Howard Matz, Presiding
CV 04-00048 AHM (VBKx)

APPELLANT'S OPENING BRIEF

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STATEMENT OF JURISDICTION

Subject matter jurisdiction in the District Court was proper under 28 U.S.C. § 1331 for claims pursuant to 42 U.S.C. § 1983. The order denying defendant and appellant Eric Youngquist's motion for summary judgment based on qualified immunity was entered on July 6, 2005. (CR 52; ER 84.) Appellant Eric Youngquist filed a notice of appeal on July 27, 2005. (CR 54; ER 102.) The appeal is timely pursuant to Rule 4, Federal Rules of Appellate Procedure and this Court therefore has jurisdiction pursuant to 28 U.S.C. § 1291 and *Mitchell v. Forsyth*, 472 U.S. 511, 530, 86 L. Ed. 2d 411, 427, 105 S. Ct. 2806 (1985).

ISSUES PRESENTED

Did the district court err in denying defendant Eric Youngquist's motion for summary judgment based on qualified immunity given that based on existing law Youngquist could reasonably believe he had probable cause to arrest plaintiff Margaret John?

SUMMARY OF ARGUMENT

Plaintiff Margaret John, an elementary school teacher, was arrested by defendant Eric Youngquist, a City of El Monte police officer, after a ten-year-old female student in John's class, A.M., accused John of inappropriate sexual touching. Youngquist was summoned to the school after John intercepted notes from A.M. indicating that A.M. wanted to kill her. Youngquist, an experienced officer with training in child abuse interrogations, questioned A.M. and found her credible, testing her veracity by various interrogation techniques. Because there were no other witnesses to the incident, Youngquist attempted to question John. John, however, after conferring with an attorney via telephone, expressly told Youngquist that she wanted to "make a record of [her] request to have an attorney present." Since Youngquist could not question her once she made that request, he had A.M.'s detailed statement concerning the assault, and John was presently on school property at the site where the assault took place and potential evidence might be present, he immediately arrested John.

Ms. John was held 36 hours, and then released. The district attorney subsequently refused to file charges pending further investigation. Ms. John then filed this action in federal court, asserting various claims, the remaining of which assert claims for false arrest and imprisonment in violation of the Fourth

Amendment under 42 U.S.C. § 1983, and state claims for false arrest and imprisonment and state civil rights claims pursuant to California Civil Code section 52.1. Named as defendants were the City of El Monte, the El Monte Police Department Chief of Police Kent Weldon, and Officer Youngquist.

The parties filed cross-motions for summary judgment, Youngquist contending that the arrest was made with probable cause under the Fourth Amendment and, at the very least, he was entitled to qualified immunity. The district court denied both motions, concluding with respect to Youngquist's claim of qualified immunity that a reasonable police officer, if plaintiff's version of the facts were believed, should have known that the arrest lacked probable cause.

The district court's conclusion is untenable.

As the district court itself conceded, case law makes it clear that a sufficiently detailed victim's statement in and of itself can constitute probable cause, especially where, as here, the only other "witness" to the crime was the suspect herself, who did not give any account of the incident to Youngquist. Contrary to the district court's assertion, there was no material dispute that Ms. John *told* Youngquist that she wanted to make a record of her request to speak with an attorney during questioning. Ms. John did not testify that she told Youngquist that she would immediately speak with him without an attorney.

Though John now says that, notwithstanding her statement she actually *intended* to speak with Youngquist, but that he arrested her before she could do so, that doesn't alter the fact that she admits that she, at the time, told him only that she wanted to make a record of her request to speak with an attorney.

Moreover, as defendant's expert testified, and as case law makes clear, Youngquist was justified in arresting John at the scene of the crime given the potential for destruction of evidence, the possibility of flight, and the presence of other students that day and in the future. The district court's suggestion that consideration of such factors did not justify John's arrest because lesser means could have been used to accomplish the same purposes, i.e., asking John to take a voluntary leave of absence, the Supreme Court has expressly rejected precisely that analysis. Police officers are not required to use a less intrusive alternative either to make an arrest or secure premises for search.

In addition, other factors cited by the district court, such as the age of the victim, her motive for retaliation against the teacher, and Ms. John's "impeccable" record did not render the arrest unreasonable, let alone justify denial of qualified immunity. Courts have held that police officers may properly rely on testimony from victims far younger than the one here to justify an arrest, especially where, as here, the officer is trained in and employs proper interrogation techniques. Moreover, trained officers know that "disturbed"

children are often the victims of sexual abuse and that, unfortunately, however "impeccable" a record a teacher, or any other professional might have, means nothing in determining whether or not that individual, on a particular occasion, did or did not commit a sexual assault.

Police officers are required to make difficult calls on a daily basis. Here, officer Youngquist was faced with a Hobson's choice. He received a detailed allegation of sexual assault concerning a teacher who was present at the scene of the crime, and could have ongoing contact with students. Rather than immediately deny the allegation, the teacher declined to speak without an attorney being present. Confronted with these facts, Youngquist believed he had probable cause to arrest John. Even assuming he was in error (he was not), at the very least, under the governing law he could reasonably believe that arrest was appropriate. These are precisely the circumstances in which an officer is entitled to qualified immunity. The court should have granted Youngquist's motion for summary judgment based on qualified immunity.

STATEMENT OF THE CASE AND RELEVANT FACTS

On January 6, 2004, plaintiff Margaret John filed a complaint for damages for violation of civil rights and supplemental state law torts. (CR 1; ER 1.) Named as defendants were the City of El Monte, the El Monte Police Department, its chief of police Ken Weldon, and police officer Eric Youngquist. (*Id.*) The complaint alleged that during the 2002-2003 school year, Ms. John taught fifth grade at Twin Lakes Elementary School in El Monte. (*Id.*, p. 2.) The central allegation of the complaint was that officer Youngquist had arrested her without probable cause for allegedly molesting one of her students. (*Id.*, p. 3.) According to plaintiff, she was held 36 hours in jail and then released without charges being filed. (*Id.*) Plaintiff asserted claims for violations of the Fourth, Fifth and Fourteenth Amendments, as well as claims for violation of civil rights and for false imprisonment under state law, and for conspiracy to violate civil rights. (*Id.*) The parties subsequently stipulated to dismiss plaintiff's Fifth and Fourteenth Amendment claims, as well as her conspiracy claims against all defendants, as well as her federal civil rights claims against the City of El Monte. (CR 29; ER 16.)

On February 18, 2005, defendants filed their motion for summary judgment. (CR 31, 32, 33.) Youngquist contended that the arrest was based on

probable cause and, at the very least, he was entitled to qualified immunity. Youngquist's declaration established the following.

Youngquist had been a police officer with the City of El Monte for over eleven years at the time of the incident. (CR 33; ER 8, ¶ 2.) He had over 700 hours of Police Officer Standard Training (POST) courses, obtained a bachelor of arts degree and a juris doctor degree. (*Id.*)

Youngquist had taken over 750 hours of additional POST courses over and above those he received at the police academy. (*Id.*, ¶ 3.) Among these were a 40-hour seminar at the University of California in child abuse, which included areas of questioning suspected victims of abuse, a 40-hour seminar in advanced criminal investigation, including advanced interviewing techniques, and a 24-hour seminar on elder abuse investigations which also included areas of interviewing techniques. (*Id.*, ¶ 3.) When he became a school resource officer in January 2003, he then attended a 40-hour POST-training course in that area as well. (*Id.*, ¶ 4.)

On April 1, 2003, Youngquist was informed by a fellow school resource officer that a female student was being detained at Twin Lakes Elementary School. (*Id.*, ¶ 5.) When Youngquist arrived at the school, he met with principal Jeffrey Lagozzino, who informed him that a fifth grade student, A.M., had apparently written several letters which were confiscated in class. (*Id.*, ¶ 6.)

These letters stated in part "and I'm hoping Ms. John dies today like poisoning her or something." (*Id.* ER 9, ¶ 7.) Other letters written to a classmate by A.M. stated that Ms. John is "a fucking perv," and "Ms. John is a lesbian bitch." (*Id.*)

Youngquist then met with A.M. in the school office. (*Id.*, ¶ 8.) She appeared nervous and afraid to talk to him, speaking only softly as if she did not want anyone to overhear what she was saying, and looking around to assure herself that no one was nearby listening. (*Id.*) Because of her hesitation, Youngquist asked if she would be more comfortable speaking with him at the police department and she acknowledged she would. (*Id.*) After receiving appropriate approval, he took A.M. to the station.

When he questioned A.M. at the station, she provided him with the following information:

- She knows the difference between telling the truth and a lie.
- She informed Youngquist that she did not like Ms. John, although she liked school.
- She felt Ms. John singled her out in class for discipline reasons.
- A few weeks earlier she was staying after school for detention with approximately five other students.
- While writing her assignment, the other students filtered out when their rides home arrived.

- While she was the last student to remain, Ms. John came up and stood behind her.

- Without any words being spoken, Ms. John placed her right hand on A.M.'s left shoulder area of her shirt and then moved her hand down and began caressing A.M.'s left breast with her hand.

- Ms. John rubbed on the outside of A.M.'s clothing in an upwards and downward motion on her left breast.

- After rubbing her breast area, Ms. John began moving her hand down near A.M.'s vaginal area on the outside of A.M.'s pants. Ms. John left her hand on the outside of A.M.'s crotch area adjacent to her vagina on the outside of her clothing and her hand remained there for approximately one minute.

- There were no witnesses to the incident, nor was A.M. physically injured. When asked why she didn't run away, A.M. stated that she was afraid of Ms. John.

- A.M. had not told anyone about this incident until informing Youngquist. (CR 33; ER 9-10, ¶ 9.)

The facts A.M. related to Youngquist established a violation of California Penal Code section 288(a), lewd and lascivious acts with a child under the age of fourteen years. (*Id.* ER 10, ¶ 10.) However, Youngquist did not take A.M.'s

statements merely at face value. Youngquist wanted to assure himself that A.M. was telling him the truth and her accusation not the product of hatred, ill feelings or delusion. (*Id.*, ¶ 11.) These were serious allegations, there were no witnesses or physical evidence to prove or disprove the incident. (*Id.*) In evaluating A.M., Youngquist considered the following:

- A.M. admitted to writing several of the notes, and took a mature attitude regarding her conduct. A.M. did not attempt to place blame on someone else.

- A.M. admitted to the emotion behind several of the statements in the notes, showing frustration, anger and sadness, which were all appropriate for the situation.

- Youngquist had asked her based upon what she had stated about Ms. John if A.M. would apologize for her written comments. A.M. adamantly stated she would not. This emotional response was not inconsistent with the assault A.M. described.

- A.M. acknowledged that it was wrong to make threatening remarks about her teacher, and this response was mature as it showed self blame. Her response was appropriate and not exaggerated.

- Prior to her description of the touching, A.M. became very quiet and stopped communicating for a moment. She provided short word

descriptions, and all of this behavior was consistent with that displayed by a victim of sexual abuse.

- Youngquist would have her point to an area where she just described having been touched, and she would then point to the area she had just described. This was done in order to detect possible deception, since someone who is deceitful might describe touching in one area but then inadvertently point to another.

- Youngquist validated her account, by providing her false or exaggerated facts in describing the incident, and each time she would correct him and stay consistent with he original description. Youngquist did this to allow her to embellish or fabricate the facts regarding the events – which would test her veracity, and she would not allow it.

- Youngquist believed she was a mature ten-year-old, and her description of the events, her consistency and accuracy without any detection of exaggeration, fabrication or deception was paramount for him to form the belief that she was a genuine victim.

- The notes themselves provided independent corroborating evidence that the act occurred. It was significant that the notes called plaintiff a "lesbian" and "perv" which are consistent with the character of the assault as A.M. described it. They were also written a short time after the incident, in

secret to a friend, and not with the intent to cause "trouble" for Ms. John. Youngquist believed that the words used in the note supported the belief of the truth of A.M.'s account, and that it was highly probable that the described activity occurred. (CR 33, ¶ 11; ER 10-12, ¶ 11.)

Based upon all of the information he had received, Youngquist believed he had legal sufficient reliable information to support probable cause to arrest Ms. John for violation of California Penal Code section 288. (*Id.* ER 12.)[1] He then contacted Gloria Diaz, a Mountain View School District officer, and explained the information and investigation. (*Id.*, ¶ 13.) In the late afternoon he returned to Twin Lakes Elementary School and was informed that Ms. John was standing by for him to interview her. (*Id.*, ¶ 14.) This was a non-custodial interview. (*Id.*)

Ms. John initially provided Youngquist with her driver's license number and some preliminary identification. (*Id.*, ¶ 15.) But she was then called away

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[1] California Penal Code section 288, subdivision (a) provides, in pertinent part:

> Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

and upon returning several minutes later, informed Youngquist that she was being advised by her attorney not to make any statements regarding her involvement in the incident. (*Id.*) Youngquist ceased further questioning and then placed her under arrest and transported her to the station. (*Id.*) The following day, Youngquist conducted further investigation at the school. (*Id.*, ¶ 16.) He was unable to locate any additional victims at the school alleging any type of sexual battery involving Ms. John. (*Id.*) He was subsequently informed by the district attorney's office that the case had not been rejected, but that the district attorney requested that further investigation be done. (*Id.*, ¶ 17.) Youngquist stated that he had no reason to believe that any actions he took with respect to Ms. John violated her constitutional rights or otherwise were unlawful. (*Id.* ER 13, ¶ 19.) Nor did he conspire to discriminate against anyone on the basis of race, color, ancestry or national origin. (*Id.*, ¶ 20.)

Defendants also filed A.M.'s declaration, reaffirming her account of the incident with Ms. John and the fact that she truthfully related it to officer Youngquist. (CR 33; ER 14.)

On March 7, 2005, plaintiff filed her opposition to defendants' motion for summary judgment as well as a cross-motion for summary judgment. (CR 34, 35, 36, 37, 38.) The central contention of plaintiff's opposition and motion was that officer Youngquist did not conduct an adequate investigation, and that

had he done so, he would have doubted A.M.'s account and hence lacked probable cause to arrest Ms. John. In her declaration, Ms. John stated that she had been employed at Twin Lakes School since 1985, and that in the 2002-2003 school year she taught fifth grade. (CR 36; ER 22-23, ¶¶ 6-7.) A.M. was transferred into her class after A.M.'s mother requested she be transferred to John because A.M. had been having disciplinary problems in another classroom. (*Id.*, ¶ 7.) Prior to John's arrest, A.M.'s mother had written to her praising her for her efforts to discipline A.M. (*Id.*)

John noticed that A.M. was a very troubled child and difficult to control in school, and had her serve detention several times. (*Id.*, ¶ 9.) John denied ever being alone in the classroom with A.M. during a detention during the time in question. (*Id.* ER 23, ¶ 10.) On March 26, 2003, John intercepted notes from A.M. to her friend and given that one of the notes indicated A.M. wanted to kill John, she brought the documents to the attention of the principal, and A.M. was subsequently suspended. (*Id.*) On March 31, 2003, Ms. John was summoned to the principal's office to speak with officer Youngquist. (*Id.* ER 24, ¶ 15.) According to John, Youngquist advised her that he had reviewed the notes A.M. had passed, and did not take the threat by A.M. against John very seriously because it was made by a ten-year-old girl. (*Id.*) John stated that Youngquist said he would file a complaint but the department wasn't going to do anything

about it. (*Id.*) Youngquist then got up and walked out of the room and John left for a staff meeting. (*Id.*)

She was then informed by the principal that A.M. had refused to speak with the officer in front of the principal. (*Id.*, ¶ 16.) The principal said he had left the officer and A.M. alone in a room and Youngquist subsequently emerged, stating that he thought that A.M. was "more hard core than I thought" and that he would have to take her to the station. (*Id.*)

After the staff meeting, John returned to the classroom to prepare a lesson plan for the next day, but the principal came by and asked if she could stop by the office before she left. (*Id.* ER 25, ¶ 17.) When John went to the principal's office, she was informed that she was being put on administrative leave because A.M. claimed she had "pulled" her breast. (*Id.*) John confirmed with district officials that she had been placed on administrative leave pursuant to district police and that police officers would come to the school to question her. (*Id.*) Another teacher, Elaine Chiu, overheard the discussion and suggested that John call her sister-in-law, Agnes Chiu, who was a lawyer. (*Id.*, ¶ 18.) John recalled that a brochure from her union had advised that if a teacher was accused of molestation by the police, they should ask for an attorney prior to any questioning. (*Id.*)

When officer Youngquist arrived, John asked if she could be interviewed in the presence of the principal and vice principal, and officer Youngquist declined. (*Id.*, ¶ 19.) Youngquist then asked her for her driver's license, and as he took down the information, Elaine Chiu knocked on the door and told John that Agnes Chiu – the lawyer – was on the phone. (*Id.*, ¶ 20.) John left the room to speak with the attorney. (*Id.*) John explained the situation to Chiu, with whom she had never spoken before. (*Id.* ER 26, ¶ 21.) Chiu explained that she was a civil attorney, not a criminal attorney, and offered to refer John to an attorney who handled criminal cases. (*Id.*, ¶ 22.) John stated that she believed this was an emergency situation, however, and that there might not be time to consult another attorney. (*Id.*) Chiu then asked to speak with Youngquist. (*Id.*) After Youngquist and Chiu spoke on the phone, Ms. John against spoke with Chiu via telephone. (*Id.*) Chiu told her that she was unsure what to recommend and that John could either insist on a delay to retain an attorney which would lead to John's immediate arrest or that John could speak with the officer in hope of avoiding arrest and incarceration. (*Id.*) Chiu told John that she "was between a rock and hard place (or words to that effect)" and that John "had little or no options." (*Id.*) Chiu told John that if she chose to speak to the police, she "should at least ask the police to make a record that I requested an attorney." (*Id.*)

John hung up the phone and returned to the conference room with officer Youngquist, who asked her what she had decided to do. (*Id.*, ¶ 23.) John told him that she "wanted him to make a record of my request to have an attorney present." (*Id.*) According to John, "before I could also inform him of my decision to co-operate, he said that because I had asked for an attorney, he could not question me, and had 'no choice' but to arrest me." (*Id.*)

John denied inappropriately touching A.M. at any time in an inappropriate manner. (*Id.* ER 27, ¶ 24.)

Plaintiff also filed a Declaration of Agnes Chiu. (CR 36; ER 52.) Chiu confirmed Ms. John's account of their conversation. (*Id.*, ¶¶ 3-5.) Chiu stated that when she spoke with Youngquist, she asked him for a slight delay to allow Ms. John to have an attorney present and that if the meeting was delayed it would be rescheduled at Youngquist's convenience. (*Id.* ER 53, ¶ 7.) She said that Youngquist's demeanor changed and began to speak to her in a condescending and demeaning tone of voice. (*Id.*, ¶ 8.) He emphatically told her that if Margaret John failed to discuss the allegations with him immediately, he would arrest her and have her jailed and that any advice that delayed his investigation would lead to her immediate arrest which would not be a pleasant experience for a teacher. (*Id.*, ¶ 8.) When she asked him to provide a reason why a slight delay would harm his investigation, Youngquist lost his temper

and repeated that John's failure to cooperate would necessitate her arrest. (*Id.*, ¶ 9.) Chiu felt pressured to cooperate and wasn't sure what advice to give Ms. John. (*Id.*) Chiu confirmed that when she again spoke with Ms. John she told her that she didn't know what to do, but that she could either insist on a delay to retain an attorney or she could speak with the officer voluntarily now in hopes of avoiding arrest and incarceration. (*Id.*)

Plaintiff also filed the declaration of a police practices "expert," who opined that Youngquist had not conducted an adequate investigation before arresting John. (CR 36; ER 32.)

Defendants filed a reply to plaintiff's opposition, which included a supplemental declaration by officer Youngquist (CR 39; ER 54), as well as an expert declaration by a police practices expert confirming that Youngquist had probable cause to arrest A.M., and noting, among other things, that absent arrest, there was the possibility of a loss of evidence or Ms. John's flight, as well as a potential risk to other schoolchildren. (CR 39; ER 66, 71, ¶ 20.)

On July 6, 2005, the court denied both motions for summary judgment. (CR 52; ER 84.) This appeal followed. (CR 54; ER 102.)

STANDARD OF REVIEW

The district court's order denying summary judgment on qualified immunity is reviewed de novo. *Genzler v. Longanbach*, 410 F.3d 630, 636 (9th Cir. 2005); *Billington v. Smith*, 292 F.3d 1177, 1183 (9th Cir. 2002). "In reviewing the district court's denial of summary judgment on the ground of qualified immunity, this Court must assume that the version of the facts asserted by the non-moving party is correct in determining whether the denial of qualified immunity was appropriate." *Wilkins v. City of Oakland*, 350 F.3d 949, 953 (9th Cir. 2003).

ARGUMENT

IN LIGHT OF THE LAW, AND THE FACTUAL DETAIL AND CIRCUMSTANCES SURROUNDING A.M.'S STATEMENT, YOUNGQUIST IS ENTITLED TO QUALIFIED IMMUNITY.

The district court denied Youngquist's motion for summary judgment on qualified immunity on the grounds that a triable issue of fact existed as to whether or not there was probable cause for arrest and whether Youngquist could reasonably believe there was probable cause. The district court concluded that there was a factual dispute as to whether plaintiff Margaret John agreed to cooperate in the investigation, whether Youngquist subjectively believed A.M.'s account and may have been acting vindictively against John and, finally, whether Youngquist conducted a sufficiently "reasonable" investigation into the charges. As we discuss, there is no material dispute of fact in this case and, under the governing law, Youngquist properly believed, and most certainly could reasonably believe, that there was probable cause to arrest John based upon A.M.'s detailed description of the incident.

The standards governing summary judgment are well established. The moving party bears the initial burden of demonstrating the absence of a "genuine issue of material fact for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A fact is material if it affects the outcome of the suit under the governing substantive law. (*Id.* at 248.) At that point the burden shifts to the non-moving party to establish by evidence that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

Here, Youngquist moved for summary judgment on plaintiff's Fourth Amendment wrongful arrest claim on the grounds that the undisputed evidence demonstrated that he had probable cause to arrest John or, at the very least, was entitled to qualified immunity. As the Supreme Court has repeatedly held, the qualified immunity analysis is two-step. The first inquiry "must be whether a constitutional right would have been violated on the facts alleged . . . ." *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001). If that answer is in the affirmative, then "the next, sequential step is to ask whether the right was clearly established. This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition . . . ." *Id*. Thus, in the context of a Fourth Amendment claim for unreasonable search or seizure, it is not enough for a plaintiff to contend that it

is "clearly established" that a search conducted without probable cause is unlawful, or that unreasonable amount of force is prohibited by the Fourth Amendment. As the Supreme Court emphasized in *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987), "the right the official is alleged to have violated must have been 'clearly established' in a more particularized, and hence more relevant, sense: the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Thus, "[t]he relevant dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful *in the situation he confronted*." *Saucier*, 533 U.S. at 202, 121 S. Ct. at 2156; emphasis added. "[T]he focus is on whether the officer had fair notice that . . . conduct was unlawful," and hence "reasonableness is judged against the backdrop of the law at the time of the conduct. If the law at the time did not clearly establish that the officer's conduct would violate the Constitution, the officer should not be subject to liability or, indeed, even the burdens of litigation." *Brousseau v. Haugen*, 543 U.S. 194, 125 S. Ct. 596, 599, 160 L. Ed. 2d 583 (2004). If the borders of a particular constitutional standard are "hazy" the officer is shielded from liability. *Saucier v. Katz*, 533 U.S. at 206 [qualified immunity operates

"to protect officers from the sometimes 'hazy' border between excessive and acceptable force'"]; *Brousseau*, 125 S. Ct. at 600 [same].

The general standards governing probable cause to arrest under the Fourth Amendment are well established. But application of those general standards to specific factual contexts, most particularly the extent to which an officer can or cannot rely on the testimony of a single witness and corroborating circumstances, or whether he is somehow required to undertake further investigation, is at best "hazy." The line is blurred even more in the context of investigations of possible child abuse, where the ages of victims, particularity of descriptions, and identity of perpetrators falls across a wide spectrum. Given the facts in this case, as well as the applicable law at the time of plaintiff's arrest, it is clear that, at the very least, Youngquist could reasonably believe he had probable cause to arrest John.

A. Based on the Facts and Status of the Law, Youngquist Could Reasonably Believe There Was Probable Cause to Arrest John.

For purposes of the Fourth Amendment "[p]robable cause exists when, under the totality of the circumstances known to the arresting officers, a prudent person would have concluded that there was a fair probability that [the suspect]

had committed a crime." *United States v. Bruckner*, 179 F.3d 834, 837 (9th Cir. 1999); *Peng v. Penghu*, 335 F.3d 970, 976 (9th Cir. 2003). Similarly, under California law, an officer has probable cause for a warrantless arrest "if the facts known to him would lead a [person] of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime." *People v. Adams*, 175 Cal. App. 3d 855, 221 Cal. Rptr. 298, 301 (1985). As courts have recognized "[c]ontrary to what its name might seem to suggest, probable cause 'demands even less than "probability,"' [citation]; it 'requires more than bare suspicion but need not be based on evidence sufficient to support a conviction, nor even a showing that the officer's belief is more likely true than false.'" *Woods v. City of Chicago*, 234 F.3d 979, 996 (7th Cir. 2000), quoting *United States v. Moore*, 215 F.3d 681, 685-86 (7th Cir. 2000).

As the Supreme Court has emphasized, because the presence or absence of probable cause is a fact specific, practical inquiry turning on the "totality of circumstances" (*Illinois v. Gates*, 462 U.S. 213, 238-39, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527 (1983)), "[r]igid legal rules are ill-suited to an area of such diversity." *Id*. at 462 U.S. at 232, 103 S. Ct. at 2329. Thus, officers are entitled to a broad latitude in evaluating the accounts of a victim, or other witnesses – to

the extent other witnesses are even available – in determining whether or not probable cause exists to arrest.

Case law in this Court and other federal appellate courts makes it clear that while a police officer cannot simply uncritically accept any account given to him by a victim or any other witness, and evaluate it in a vacuum, nor turn a blind eye to exculpatory evidence, an officer is not required to conduct a full blown investigation once he has received evidence which, if capable of being believed, provides a basis for probable cause. As the Seventh Circuit has held, an officer is entitled to rely on a detailed statement of a victim even if it is contradicted by other witnesses, so long as the contrary evidence does not "render [the victim's] report incredible as a matter of law." *Woods v. City of Chicago*, 234 F.3d 979, 997 (7th Cir. 2000); emphasis added, parentheses omitted. Quite simply, the "inquiry is whether an officer has reasonable grounds on which to act, not whether it was reasonable to conduct further investigation." *Spiegel v. Cortese*, 196 F.3d 717, 725 (7th Cir. 2000).

This Court has expressly held that an officer may find probable cause or, at the very least, is entitled to qualified immunity for making an arrest based upon evaluation of the credibility of a single witness. In *Peng v. Penghu*, *supra*, 335 F.3d 970, the plaintiff asserted that the officer had arrested him without probable cause in violation of the Fourth Amendment under section

1983. The plaintiff had been arrested for robbery following a domestic dispute in which he had gotten into a tug of war over documents with the alleged victim, and during which he purportedly raised his hand as if to strike her. 335 F.3d at 973. The defendant officer had arrested him based upon the account of the victim and two witnesses, none of whom spoke English. The officer was forced to rely on a translation of their testimony by the victim's son. 335 F.3d at 972. The district court granted summary judgment and this Court affirmed. The Court rejected the plaintiff's contention that the officer failed to make an adequate investigation of the basis of the victim's account and, more critically, the translator's "veracity." 335 F.3d at 979. At this Court emphasized:

> We conclude that the presence of a factual dispute regarding a victim's complaint at the scene of an alleged domestic disturbance does not defeat probable cause if: (1) the victim's statements are sufficiently definite to establish that a crime has been committed; and (2) the victim's complaint is corroborated by *either* the *surrounding circumstances* or other witnesses.

Id.; emphasis added.

Here, under *Peng*, it is clear that Youngquist could reasonably believe that he had probable cause to arrest John based upon A.M.'s statement. First,

A.M.'s statements are sufficiently definite to establish that a crime has been committed. *Peng*, 335 F.3d at 979. As noted, A.M. provided an extremely detailed account of the alleged abuse. The particular acts were described in detail (ER 9-10) and, more critically, A.M. was consistent in her description of those acts in the face of Youngquist's repeated inquiry and notwithstanding his attempts to lead her into exaggeration for the very purpose of testing her veracity.

Moreover, A.M.'s complaint was plainly corroborated by "the surrounding circumstances." *Peng*, 335 F.3d at 979. As Youngquist noted, this was not a case where A.M. freely volunteered the alleged attack without prompting. Rather, A.M. only disclosed the allegations when the note-passing was discovered, and even then only when she was off school premises. Her answers were short, her demeanor reserved and, as noted, her story consistent. In addition, as Youngquist also observed, the text of the notes themselves denoted activity that was consistent with the nature of the abuse allegations A.M. was making against John. Quite simply, the circumstances in which she complaint arose – without advance prompting by A.M., with notes squarely addressing the very sort of conduct at issue, and an account made in halting, but consistent fashion only when the victim was in the relative comfort of a police station far from the site of the alleged abuse, gave ample reason for Youngquist

to believe A.M. was telling the truth. Most certainly, nothing in her statement was "incredible as a matter of law." *Woods v. City of Chicago*, 234 F.3d at 997.

Nor can Youngquist be faulted for purportedly failing to interview other witnesses. As a threshold matter, A.M. told Youngquist that there was no one else in the room at the time the assault occurred. (ER 9-10.) Youngquist did try and interview the only other participant in the incident – John – but she cut the interview short by invoking her right to counsel.

It is essential to note that while the district court asserts there is somehow a material issue of fact as to whether John agreed to be interviewed by Youngquist, review of the record belies the district court's characterization. By her own admission, after speaking via telephone with attorney Chiu, John specifically told Youngquist "I wanted him to make a record of my request to have an attorney present." (ER 26, ¶ 23.) While John asserts that she was then going to tell him that nonetheless she would cooperate, how was Youngquist to know what she "really" intended to do? Nothing indicates that Youngquist should have been aware of John's subjective intention to cooperate, notwithstanding the fact that she had just informed him that she wanted to put on record the fact that she did not want to speak without an attorney. Ms. John wanted it both ways – to invoke her right not to speak without the presence of

attorney, but then, nonetheless, try and assert that she would have cooperated had Youngquist only given her the chance to do so. Perhaps Ms. John is the victim of bad legal advice or her own judgment, but Youngquist cannot be taken to task for accepting at face value a criminal suspect's statement that she wanted to "make a record" of her "request to have an attorney present." Indeed, had Youngquist proceeded with questioning, he would probably be the subject of a different lawsuit.

At the time he arrested John, Youngquist had a reasonable basis to believe that there was probable cause for the arrest. He had a detailed victim's account, an account which he had found to be credible, based upon numerous attempts to "shake" A.M. from her story, and based also on the context of the accusations, more critically, the specific language of the notes, A.M.'s demeanor and the circumstances under which she made her statements. And, when he attempted to interview the alleged perpetrator, the perpetrator declined to cooperate, thus leaving him solely with A.M.'s account. Given that information, the fact that John was on school grounds, at the very site where the alleged assault occurred, and by nature of her position would continue to be in contact with children, Youngquist could reasonably believe that he had probable cause to immediately arrest her.

The district court dismissed concerns about preservation of evidence, John's possible flight, or even her ongoing dealing with students as mere hyperbole. (ER 99 n.5.) It also observed that these concerns could have been addressed by Youngquist through lesser means such as securing an agreement by John to leave the premises and avoid teaching pending completion of investigation. (ER 99-100 n.9.) But those concerns were not mere hyperbole – as the district court even acknowledged earlier in its order, case law makes it clear that police officers may take into account a suspect's access to other potential victims in determining probable cause for arrest. *See* ER 97, citing *Easton v. City of Boulder*, 776 F.2d 1441 (10th Cir. 1985) [officers had probable cause to arrest based on equivocal statements by four-year-old victim and concern about other children living in apartment complex where alleged acts occurred].

Moreover, the district court's suggestion that Youngquist was in any event required to use lesser means to address these concerns, is meritless. The Supreme Court has expressly rejected a "less intrusive alternative" test in the context of seizures under the Fourth Amendment. In *Illinois v. Lafayette*, 462 U.S. 640, 103 S. Ct. 2605, 77 L. Ed. 2d 65 (1983), the Court held that a police officer's inventory search of an arrestee's handbag during booking at the police station for purposes of assuring that no contraband entered the jail and to

protect against theft claims against officers was reasonable under the Fourth Amendment. The Court rejected the contention that the availability of a lesser intrusive alternative – simply sealing handbag within a plastic bag or box and placing it in a secured locker – had any impact on the reasonableness of the inventory search under the Fourth Amendment. The Court observed that the "reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative 'less intrusive' means." 462 U.S. at 647. In so holding, the Court observed that in *Cady v. Dumbrowski*, 413 U.S. 433, 9 S. Ct. 2523, 37 L. Ed. 2d 706 (1973), in upholding the search of a trunk of a car to find a revolver suspected of being there, it had rejected the similar contention that the public would be equally well protected by simply posting a guard over the car, and held "[t]he fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means does not by itself, render the search unreasonable." *Illinois v. Lafayette*, 462 U.S. at 648, quoting *Cady*, 413 U.S. at 447.

Numerous cases reaffirm this principle. *See Skinner v. Railway Labor Executives Ass'n, et al.*, 489 U.S. 602, 629 n.9, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989) [upholding federal railroad administration drug and alcohol testing, and rejecting argument that the availability of less intrusive means must be considered for Fourth Amendment purposes]; *Colorado v. Bertine*, 479 U.S.

367, 373-74, 107 S. Ct. 738, 93 L. Ed. 2d 739 (1987) [upholding inventory search of contents of van and rejecting contention that the existence of other less intrusive means to secure the van did not render the search unlawful under the Fourth Amendment]. The Court's rejection of a less intrusive alternatives test under the Fourth Amendment rests on its recognition that the "'logic of such elaborate less-restrictive alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-seizure powers,' [citation], because judges engaged in post-hoc evaluations of government conduct 'can almost always imagine some alternative means by which the objectives of the (government) might have been accomplished.'" *Skinner v. Railway Labor Executives Ass'n*, 489 U.S. at 629 n.9, quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-57 n.12, 96 S. Ct. 3074, 49 L. Ed. 2d 1116 (1976) and *United States v. Montoya de Hernandez*, 473 U.S. 531, 542, 1055 S. Ct. 3304, 87 L. Ed. 2d 381 (1985).

Given existing case law and the facts he possessed, Youngquist could reasonably believe that he had probable cause to arrest John. As we discuss, the cases the district court cites as somehow creating "clearly established" law for purposes of defeating qualified immunity in this case, do no such thing.

B. The Cases Cited by the District Court Do Not Delineate Any "Clearly Established Law" That Would Somehow Give Youngquist "Fair Notice" That He Lacked Probable Cause to Arrest John.

In concluding that Youngquist somehow had "fair warning" that his arrest of John might have violated the Fourth Amendment, the district court cited four decisions from this Court. Yet, none of the cited opinions suggests that Youngquist lacked probable cause to arrest John based upon the undisputed facts here, let alone "clearly established" guidelines in the hazy area of determining probable cause in child abuse investigations.

As a threshold matter, the district court cites *Devereaux v. Abbey*, 263 F.3d 1070 (9th Cir. 2001) (en banc), for the proposition that Youngquist should have been generally aware of "'sexual witch hunts' [which] engulfed many towns in the 1980s and 1990s" and those "highly publicized controversies, the attendant reversals of numerous convictions, the accompanying filing of civil charges by the wrongfully accused" should, in part, have "put any reasonable officer on notice that he could not rely solely on the police station interview of ten-year-old A.M. to establish probable cause to arrest plaintiff." (ER 101.) Significantly, the district court's citation is to a footnote in the concurring and

dissenting opinion in *Devereaux*. The majority opinion concluded that police officers who had been sued by a criminal defendant accused of child abuse for purportedly using improper interviewing and investigative techniques on child abuse victims, were entitled to qualified immunity on plaintiff's due process claim precisely because "there is no constitutional due process right to have child witnesses in a child sexual abuse investigation interviewed in a particular manner, *or to have the investigation carried out in a particular way*." 263 F.3d at 1075, emphasis added. As the majority opinion emphasized, "interviewers of child witnesses of suspected sexual abuse must be given some latitude in determining when to credit witnesses' denials and when to discount them, and we are not aware of any federal law – constitutional, decisional, or statutory – that indicates precisely where the line must be drawn." 263 F.3d at 1075. Thus, if anything, *Devereaux* supports Youngquist's claim of qualified immunity here, given that plaintiff's suit is premised largely on secondguessing Youngquist's investigative techniques.[2]

Moreover the observation by the *Devereaux* concurring and dissenting opinion that there was a general awareness of "witch hunts" is utterly irrelevant to the qualified immunity inquiry as defined by the Supreme Court which, as

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[2] Indeed, that appears to be the sole focus of plaintiff's hired-gun expert. (ER 32-43.)

noted, is focused on case law, not "general awareness." *Devereaux* does not defeat qualified immunity. If anything, it underscores precisely why Youngquist is entitled to invoke the doctrine here.

Nor, contrary to the district court's conclusion, do *Fuller v. M.G. Jewelry*, 950 F.2d 1437 (9th Cir. 1991) or *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912 (9th Cir. 2001) suggest that Youngquist could not reasonably believe he had probable cause to arrest John. In *Fuller*, the Court affirmed summary judgment for a police officer on a Fourth Amendment wrongful arrest claim, where the officer had arrested the plaintiff for stealing a ring while shopping in a jewelry store. The officer relied upon the account of the jewelry shop owner as to what transpired, and some witnesses who observed the defendant after the alleged theft occurred. In affirming judgment, the Court acknowledged that while police officers are entitled to rely upon detailed reports by "honest citizens such as the victim in determining whether probable cause exists, nonetheless an officer cannot simply unconditionally accept any statement by a victim, but rather, must "examine further the basis of the witnesses' knowledge *or* talk with any other witnesses." *Id*. at 1444, emphasis added. With respect to use of a victim's statement as a basis for probable cause, the Court emphasized:

> We agree with the California Supreme Court that the general proposition that private citizen witnesses or crime victims are presumed reliable does not 'dispense with the requirement that the informant . . . furnish underlying facts *sufficiently detailed to cause a reasonable person to believe a crime had been committed and the named suspect was the perpetrator*.'

950 F.2d at 1444, citing *People v. Ramey*, 16 Cal. 3d 263, 269, 127 Cal. Rptr. 629, 545 P.2d 1333 (1976).

While, in *Fuller*, the officers in fact interviewed other witnesses, nonetheless, as the Court's statement makes clear, so long as the victim's statement is "sufficiently detailed to cause a reasonable person to believe a crime has been committed and the named suspect was the perpetrator" (*id.* at 1444) this would provide a basis for probable cause. Indeed, it could not be otherwise since many cases, as here, involve crimes where there are no witnesses other than the victim and the perpetrator. Under such circumstances, an officer has little else other than to determine whether the victim's statement furnishes "underlying facts sufficiently detailed" to provide probable cause.

In *Arpin v. Santa Clara Valley Transp. Agency*, *supra*, 261 F.3d 912, plaintiff was arrested by sheriff's deputies after a bus driver effected a citizen's arrest for battery and directed the officers to take the plaintiff into custody. In

holding that the plaintiff alleged an arrest without probable cause for purposes of surviving a motion to dismiss under Rule 12(b)(6), Federal Rules of Civil Procedure, the Court observed that the complaint alleged that the officers had merely taken the plaintiff into custody based upon the bus driver's statement without investigating the "basis of the witnesses' knowledge or interview[ing] other witnesses." The Court noted that the complaint alleged that the arresting officer refused to "identify himself, would not inform her of the reason she was being arrested, and did not allow Arpin to explain her side of the story prior to arresting her." 261 F.3d at 925. Again, it is a far cry from the circumstances of this case. Youngquist questioned A.M. at length to determine the factual basis for her claim. He attempted to interview John but, as noted, that interview was foreclosed by John herself who, by her own admission, told him that she wanted to "make a record" of her request not to speak without an attorney being present.

Finally, the district court also cites *Wallis v. Spencer*, 202 F.3d 1126 (9th Cir. 2000) as putting "any reasonable officer on notice that he could not rely solely on the police station interview of ten-year-old A.M. to establish probable cause to arrest plaintiff." (ER 101.) The district court's reliance on *Wallis* is puzzling, given that earlier in its decision, the district court expressly noted that "Wallis deals with a situation different than here . . . ." (ER 93.) Indeed, *Wallis*

involved a due process claim by parents and a child against various police officers, health care and social workers for removing the child from the parents' custody based upon allegations by an inpatient in a mental institution to the effect that the parents were involved in ritual satanic abuse of the children.

According to the district court, *Wallis* is "instructive" to the extent that there this Court reversed summary judgment to the defendants on the plaintiffs' due process claim based on "among other things, that the city and its detectives had not interviewed the mother and 'did not undertake any significant investigation into the underlying charge, specifically the allegation that (the daughter) would be sacrificed.'" (ER 93 citing 202 F.3d at 1139-40.) But *Wallis* is a far cry from this case. As even the district court conceded, there, the police officers summarily removed the child from plaintiff's custody based upon a thirdhand report of ritual satanic abuse made by an individual who was confined in a mental institution for mental illness. The officers did not interview either the purported victim, or make any attempt to interview the accused parents. In contrast, of course, here Youngquist received a firsthand report from the victim, whom he interrogated vigorously. He had consistent corroborating evidence, i.e., the notes passed in class. He also attempted to

interview the perpetrator. This case is nothing like *Wallis*.[3] That the district court must go so far afield in finding "clearly established" law to give Youngquist "fair notice" that his arrest of John might have violated the Fourth Amendment, is telling. Review of the governing law makes it clear that Youngquist could, under the circumstances, reasonably believe he had probable cause to arrest John. Certainly none of the cases cited by the district court do anything to clarify this "hazy" area in light of the specific facts of this case.

C. The District Court Erred in Denying Qualified Immunity Based upon its Conclusion That a Jury Could Second-Guess Youngquist's Actions Despite Legal and Factual Grounds for His Conclusions.

As noted, in denying summary judgment based on qualified immunity, the district court invoked several cases, the bulk of which were irrelevant to any of the precise factual circumstances at issue here. The district court also denied

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[3] To the extent the district court is also invoking this Court's observation in *Wallis* (202 F.3d at 1130) that "'the fact that the suspected crime may be heinous – whether it involves children or adults – does not provide cause for the state to ignore the rights of the accused or any other parties'" (ER 93), this is once again no more than invocation of a general standard and not the specific legal guidelines in a particular factual context that the Supreme Court has held governs the qualified immunity analysis.

summary judgment by concluding that a jury would be entitled to secondguess various decisions made by Youngquist, as well as the purported motivation for those decisions. Yet, the governing law made it clear that Youngquist could rely on precisely the information he possessed. Moreover, as both the United States Supreme Court and this Court have repeatedly held, an officer's subjective intent is utterly irrelevant both to the determination of probable cause, and to qualified immunity.

1. Under the Governing Law, Youngquist Could Reasonably Believe That A.M., a Ten-Year-Old, Properly Understood the Difference Between Truth and Falsity, and Was Telling the Truth.

Among the factors the district court cited as a basis for the jury concluding that Youngquist did not act reasonably is the age of the victim. Yet review of the governing law belies the district court's position. As the district court acknowledged, courts have found that victim reports of children as young as four years old were sufficiently detailed to provide probable cause for arrest. (ER 96 citing *Rankin v. Evans*, 133 F.3d 1425 (11th Cir. 1998) [statements made by 3-1/2 year-old girl to mother]; *Lee v. City of Chicago*, 1989 WL 44346

(N.D. Ill. 1989) [statements by first grader to her mother]; ER 97 citing *Easton v. City of Boulder*, 776 F.2d 1441 (10th Cir. 1985) [probable cause found despite inconsistency in statement by four-year-old main victim and noting other victims were five years old]; *Behrens v. Sharp*, 1993 WL 205078 (E.D. La. 1993) [probable cause for arrest of father of a four-year-old girl based on allegations by the girl, her mother and the girl's teacher and social worker].) Certainly here, as noted, Youngquist conducted a thorough interrogation of A.M. for the express purposes of determining whether or not she knew the difference between truth and falsity and, after testing her account of the incident through various means, determined that she was telling the truth. There is simply no basis for a jury to believe that Youngquist acted anything other than reasonably in conducting an inquiry into determining that a ten-year-old, in general, and more particularly this ten-year-old, was telling the truth. Indeed, if the district court's conclusion is taken at face value, then an officer could never arrest for child abuse on the statement of a ten-year-old victim absent physical proof. That is simply not the law.

2. A.M.'s Status As A "Troubled" Child with disciplinary problems does not erode Probable Cause to Believe She Was Telling the Truth and That John Had Committed a Crime.

The district court also finds the jury could reasonably conclude that Youngquist lacked probable cause because he failed to determine that A.M. was a "troubled" child with disciplinary problems. As a threshold matter, many victims of child abuse are often "troubled," which is not surprising, given the profound psychological impact that abuse has on children. Thus, at most, Youngquist would have been faced with an accusation that a teacher molested a child who is a disciplinary problem or otherwise "troubled." This does not mean that the molestation could not have occurred. Even children who are troubled or have disciplinary problems are victims of abuse.

Moreover, Youngquist was aware that A.M. had been subjected to discipline by John – A.M. admitted it to him. (ER 9, ¶ 9 ["She felt Ms. John singled her out in class for discipline reasons"].) Thus, Youngquist understood and considered retaliation as a motive, but concluded A.M. was likely telling the truth based on other objective factors discerned in the course of the interrogation, i.e., A.M.'s demeanor, specificity and consistency of detail and

the text of the notes themselves. No case law suggests an officer must reject a victim's statement because the victim may have a retaliatory motive, especially in the face of other indicia that the victim is being truthful. Once again, even if questioning the principal or other teachers would have revealed that A.M. was a disciplinary problem, that would not render her account "incredible as a matter of law" so as to defeat its use as probable cause for John's arrest, much less suggest that Youngquist could not reasonably believe it provided probable cause.

3. The Delay in Reporting the Alleged Abuse Does Not Undercut Youngquist's Reasonable Belief That Probable Cause Existed to Arrest John.

The district court also stated that a jury could reasonably believe that A.M.'s delay in reporting the abuse, i.e. "staleness of the charge" somehow should have led Youngquist to believe there was no probable cause for arrest. (ER 100.) Significantly, the court cites not a single case in support of this purported legal standard as a basis for probable cause. Moreover, in the course of his interview with A.M., Youngquist discerned several reasons why A.M. might not have earlier reported the abuse, most notably her acknowledged fear

of retaliation by John. In addition, it is well accepted that victims of abuse are often fearful or embarrassed, and may not come forward for days, months or even years after the events occur. *See John R. v. Oakland Unified School District*, 48 Cal.3d 438, 442, 444, 256 Cal. Rptr. 766, 769 P.2d 948 (1989) [noting 14-year-old student did not report sexual abuse by teacher until ten months after assault]; *Christopher P. v. Mojave Unified School District*, 19 Cal.App.4th 165, 173, 23 Cal. Rptr. 2d 353 (1993) [school district may be estopped to assert claim statute as bar to student's action arising from molestation by teacher where 11-year-old student's six-month delay in reporting assault arose from fear of teacher's retaliation: "A common trait of 'child sexual abuse accommodation syndrome' is the child's failure to report, or delay in reporting the abuse. The very nature of the underlying tort deters the molested child from reporting the abuse"]. Thus, given the specific factual circumstances, as well as his training, and the governing case law, Youngquist could reasonably believe that any delay in reporting by A.M. did not erode probable cause for arresting John.

4. Youngquist's Purported Subjective Belief as to Whether He Had "No Choice" but to Arrest John Is Irrelevant to the Determination of Probable Cause and Qualified Immunity.

The district court opined that there was a factual dispute concerning whether Youngquist stated that he had "no choice" other than to arrest John, and that a jury could find that if he made that statement it would belie "his contention that he was acting in good faith and reasonably." (ER 99 n. 8.) The district court cites no authority in support of its ruling in this regard. This is not surprising, because controlling authority is to the contrary.

The question of whether there was probable cause to arrest is based on an objective standard and an officer's subjective intent is irrelevant. *Devenpeck v. Alford*, 543 U.S. 146, 160 L. Ed. 2d 537, 125 S. Ct. 588, 593, 594 (2004) ["Our cases make clear that an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause" and "Subjective intent of the arresting officer, however it is determined (and of course subjective intent is always determined by objective means), is simply no basis for invalidating an arrest. Those are lawfully arrested whom the facts known to the arresting officers give probable cause to arrest."]; *United States v. Sayetsitty*,

107 F.3d 1405, 1414 (9th Cir. 1997) [“the validity of an arrest depends upon the objective circumstances of the arrest, not upon the arresting officer’s subjective intent”].

The qualified immunity inquiry is also objective, i.e., whether a reasonable officer based upon the facts could believe that probable cause existed. *Anderson v. Creighton*, 483 U.S. at 641, 107 S. Ct. At 3040 [“The relevant question . . . is the objective (albeit fact specific) question whether a reasonable officer could have believed (his conduct) to be lawful, in light of clearly established law and the information the searching officers possessed. Anderson’s (the officer) subjective beliefs about the search are irrelevant”].

Youngquist’s subjective motive or belief is irrelevant. So long as a reasonable officer could believe A.M.’s statement and conclude that probable cause existed, that is sufficient for purposes of qualified immunity and dictates entry of judgment in favor of Youngquist.

5. Youngquist's Purported Subjective Belief as to Whether A.M. Really Intended to Harm John Is Irrelevant to Determination of Probable Cause or Qualified Immunity.

The district court also concluded a jury might reasonably believe that Youngquist lacked probable cause to arrest John because of a purported factual conflict as to whether he actually took A.M.'s threat of physical violence to John as set forth in the classroom letters "seriously." (ER 99 n. 8.) According to the court, if the jury believed Youngquist did not take A.M.'s threat to harm John seriously it could similarly find that "his claim here that he believed A.M. and took seriously her allegation of touching would be subject to serious doubt." (Id.) The district court's conclusion is legally and logically unsupportable.

First, the district court has again improperly focused on Youngquist's subjective beliefs, not upon the objective standards governing determination of both probable cause and qualified immunity. As previously noted, the Supreme Court has expressly held that an officer's subjective belief is irrelevant both to determination of probable cause and qualified immunity. (*Supra*, subpoint (C)(4).) Thus, whether Youngquist actually believed A.M. is irrelevant – the

question is whether A.M.'s statements objectively establish probable cause, or whether a reasonable officer could reasonably believe so.

Second, the question of whether or not Youngquist actually believed that A.M. posed a physical threat to John as set forth in her letter is logically irrelevant to the question whether he could, much less did believe her account of the sexual assault. Youngquist could very well believe that notwithstanding the statement and letters, that A.M. did not intend to actually harm John, or that this ten-year-old was not actually capable of harming John, yet nonetheless have a reasonable basis to believe that the letters – or at least the feelings behind them – were prompted by precisely what A.M. said they were – alleged acts of abuse by John.

6. John's "Unblemished" and "Impeccable" Reputation Does Not Undermine the Existence of Probable Cause or Youngquist's Reasonable Belief That Probable Cause Existed for John's Arrest.

The district court also states that the jury could reasonably conclude that Youngquist lacked probable cause because he did not interview the principal or other school officials who might have opined as to John's long, unblemished

record as a teacher. (ER 100.)[4] Yet, mere failure to obtain that information does not erode probable cause, any more than arresting John notwithstanding possession of that information would make the arrest unreasonable. Quite simply, even if Youngquist had John's "unblemished" record before him, he could still believe that there was a viable basis to arrest, based upon A.M.'s detailed statement and his thorough interrogation of the victim, including testing her veracity by making unsuccessful attempts to get her to exaggerate her claims. The sad fact of the matter is that abuse is often committed by individuals with "unblemished" records, whether they be doctors, lawyers, priests or even schoolteachers. (*See John R. v. Oakland Unified School Dist.*, 48 Cal. 3d 438, 769 P.2d 948, 256 Cal. Rptr. 766 (1989) [school district not vicariously liable for teacher's sexual assault on student]; *Jeffrey E. v. Central Baptist Church*, 197 Cal. App. 3d 718, 243 Cal. Rptr. 128 (1988) [church not

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[4] The district court also seems to suggest that a jury could find that Youngquist should have interviewed A.M.'s mother (ER 100, line 1) and that A.M.'s failure to disclose the attack to her mother somehow eroded probable cause. (*Id.*, line 17.) But the court doesn't indicate what additional information Youngquist would have gotten from A.M.'s mother, let alone whether it could render A.M.'s account "incredible as a matter of law" so as to erode it as a basis for probable cause. And, as noted, A.M.'s failure to disclose the attack to her mother or anyone else would similarly not erode probable cause, since abuse victims often fail to disclose such attacks until long after the event. (*See supra*, subpoint C(3).)

vicariously liable for sexual assault of student by Sunday school teacher whom child's mother thought "was a perfect man" and "second father" for child].

In a perfect world, the police would only arrest the guilty. But that is not what the law requires. Without a doubt, allegations of child abuse are serious, both for the victim and for the alleged perpetrator. Such cases are rarely straightforward, and officers are forced to make extremely difficult decisions in separating truth from falsehood. Yet, the law does not require police officers to be correct, only reasonable. So long as the officer might reasonably believe that a crime has been committed or even if he might reasonably believe that probable cause exists under governing law, liability is foreclosed. That is precisely the situation here.

Officer Youngquist received an extremely detailed report of child abuse following a thorough interrogation in which he used recognized techniques to determine the validity of the claim. When he sought to interview John, although she now states that she would have subjectively cooperated in the investigation, nonetheless, by her own admission, that is not what she told him at the time – she clearly made known her desire to "make a record" or her request not to speak without the presence of an attorney. Youngquist cannot be faulted for taking her refusal to speak at face value, and then proceeding on the only evidence he had – the firm statements of A.M. This was probable cause

for arrest. At the very least, he could reasonably believe it was so. Youngquist is entitled to summary judgment.

CONCLUSION

For the foregoing reasons, appellant respectfully submits that the order denying summary judgment on plaintiff's section 1983 claim should be reversed, and judgment entered for appellant Eric Youngquist.

Dated: November 28, 2005

Respectfully submitted,

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STATEMENT OF RELATED CASES

Appellant is aware of no related cases pending in this Court.

CERTIFICATE OF COMPLIANCE
PURSUANT TO CIRCUIT RULE 32-1

Case No. 05-56125

I certify that the Appellant's Opening Brief is proportionately spaced, has a typeface of 14 points and contains 10,807 words.

Dated: November 28, 2005

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