

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

JAY ALLEN JEWETT, )  
 )  
 Plaintiff )  
 )  
 v. ) Civil No. 95-0087-P  
 )  
 PETER DEANE, et al., )  
 )  
 Defendants )

**MEMORANDUM OF DECISION<sup>1</sup>**

This action arises out of Plaintiff's arrest on April 4, 1994 by Defendant Peter Deane, Plaintiff's probation officer. The other Defendants are also probation officers, and assisted in the arrest.

Defendants move for summary judgment on the merits of Plaintiff's claims. In the alternative, they argue that they are entitled to qualified immunity.

Plaintiff has objected to the Motion for Summary Judgment, but has failed to provide the Court with a Statement of Material Facts in dispute, pursuant to Local Rule 19. *See* Fed. R. Civ. P. 56(e) ("an adverse party may not rest upon the mere allegations [of the Complaint], but . . . must set forth specific facts showing that there is a genuine issue for trial"). Accordingly, we will analyze the Motion for Summary Judgment by viewing the facts as presented by Defendants in the light most favorable to Plaintiff.

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

### *Statement of Facts*

In the spring of 1994, Defendant Deane, a probation officer, received information that Plaintiff, one of his probationers, had sexually assaulted a woman the previous summer.<sup>2</sup> Based upon this information, Defendant Deane was asked to arrest Plaintiff, and arranged to do so when he next reported to Deane as required by the terms of his probation. Plaintiff appeared for the meeting on April 4, 1994.

Defendants Wright and Collins, also probation officers, followed Plaintiff and Defendant Deane into Deane's office to assist in the arrest. Defendant Deane informed Plaintiff that he was under arrest, and asked him to place his hands on the wall. Plaintiff complied with the request, and was searched for weapons.

After the search was completed, Plaintiff suddenly spun around, announced his apparent intent to leave, and pushed Defendant Deane across the room with sufficient force to lift him off the ground. Defendant Deane's head hit hard into the opposite wall of the office.

Plaintiff then attempted to leave the room, at which time he pushed into Defendant Collins, striking him in the chest and forcing him into a door frame. Defendant Collins then struck Plaintiff in the chest, pinning him against a nearby file cabinet.

For the next moments, Defendants Wright and Collins attempted to subdue Plaintiff by variously, grabbing his arm, and grabbing him around the waist and chest. Plaintiff continued to

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<sup>2</sup> Defendant Deane had been aware that a woman had complained that she was a victim of a sexual assault. He also knew that she had been seen coming out of the woods screaming after the assault. On April 1, 1994, Defendant Deane learned that Plaintiff had admitted to having sex with the woman at the time of the assault, and that Plaintiff was soon to be indicted.

struggle. When Defendant Deane was able to get up off the floor, he retrieved his sap from his desk,<sup>3</sup> and struck Plaintiff once or twice on the right side of his body at waist level.

Defendant Savage, also a probation officer, heard the commotion in the office next door, and went to assist. Upon arriving, he found Plaintiff on his knees, still struggling with the other Defendants. Defendant Savage brought Plaintiff to the floor using a technique whereby he extended Plaintiff's arm, holding Plaintiff's wrist with one hand while using the other to push on his elbow. Plaintiff continued to struggle momentarily, but was then subdued as a result of Defendant Wright holding his left arm, Defendant Savage holding his right, and Defendant Collins placing him in handcuffs. Plaintiff was thereafter convicted in the Maine Superior Court for Cumberland County of two counts of assault on an officer. Defendants Deane and Collins suffered serious physical injuries which, to some extent, continue to plague them.

### *Discussion*

Plaintiff alleges that the arrest itself, without a warrant, was illegal.<sup>4</sup> In addition, he alleges that the officers used excessive force in effectuating the arrest.<sup>5</sup>

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of

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<sup>3</sup> A "sap" is a hand-held piece of hard leather with a round piece of metal sewn into the tip.

<sup>4</sup> Plaintiff's Complaint also asserts, as a factual matter, that he had not violated any conditions of his probation. This assertion is conclusively refuted by the record on this Motion for Summary Judgment.

<sup>5</sup> Plaintiff has misidentified the specific constitutional rights he alleges were violated by Defendant's actions. Defendants are nevertheless adequately on notice as to the substance of the claims. (CITE).

law." Fed. R. Civ. P. 56(c). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). However, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *Anchor Properties*, 13 F.3d at (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

### ***I. Legality of the arrest.***

Plaintiff alleges that the arrest itself, without a warrant, was illegal. As Defendants argue, it is permissible for police officers to arrest a person without a warrant upon probable cause to believe he has committed a felony. *United States v. Watson*, 423 U.S. 411 (1976). The crime of gross sexual assault is a felony in the State of Maine. 17-A M.R.S.A. § 253(4), (5).

Defendants then assert that it must surely be permissible for a probation officer to make a warrantless arrest for a violation of a condition of probation where the violation is probable cause to believe a felony has been committed. Defendants cite no authority for this proposition, and the Court can find none.

However, it is true that probation officers in the State of Maine are statutorily authorized to effectuate such an arrest. 17-A M.R.S.A. § 1205(1). Further, the Court can find no authority for the proposition that such authorization is violative of the Fourth Amendment. Accordingly, the Court

concludes that, at the very least, Defendants are entitled to qualified immunity for their actions relative to Plaintiff's arrest on April 4, 1994.

The doctrine of qualified immunity shields government officers "from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated.'" *Hegarty v. Somerset County*, 53 F.3d 1367, 1373 (1st Cir. 1995) (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). This doctrine provides for the "inevitable reality that 'law enforcement officials will in some cases reasonably but mistakenly conclude that [their conduct] is [constitutional], and . . . that . . . those officials -- like other officials who act in ways they reasonably believe to be lawful -- should not be held personally liable.'" *Id.* (quoting *Anderson*, 483 U.S. at 641).

The qualified immunity inquiry has two prongs. The first prong requires us to determine whether the right asserted by Plaintiff was clearly established at the time of the contested events. *Id.* at 1373. Where the Court can find no authority that a warrantless arrest by a probation officer for a probation violation is violative of the Fourth Amendment, we cannot say that the right Plaintiff seeks to assert was "clearly established."

## ***II. Excessive Use of Force.***

With respect to Plaintiff's claim that Defendant used excessive force in effectuating the arrest, the Court concludes that Defendants are entitled to judgment on the merits of Plaintiff's claim. Defendants are entitled to use "reasonable" force in making an arrest. *Graham v. Connor*, 490 U.S. 386, 396 (1989). In determining what is reasonable, courts look to "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he

is actively resisting arrest.” *Id.* We view these factors from the point of view of a “reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.*

In this case, Defendants had probable cause to believe Plaintiff had committed a violent felony, and he actively resisted arrest in a manner which did, in fact, cause serious injury to two of the officers present. Without reiterating the facts as presented previously, the Court concludes that Defendants responded with reasonable force in light of the particular circumstances they faced. Defendants are entitled to judgment as a matter of law on this claim.

***Conclusion***

For the foregoing reasons, Defendants’ Motion for Summary Judgment is hereby GRANTED in its entirety.

***SO ORDERED.***

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Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated at Bangor, Maine on March 8, 1996.